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**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
In the Supreme Court

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CERTIORARI TO CHEROKEE COUNTY  
Court of Common Pleas  
Honorable Brian M. Gibbons, Circuit Court Judge  
Appellate Case No. 2023-000547

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ALLEN WILLIAMS JR.,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

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## **RESPONDENT'S ISSUES PRESENTED**

- I. The post-conviction relief court properly found trial counsel was not ineffective for arguing that Petitioner was entitled to a directed verdict due to lack of specific intent rather than because the State did not present any direct evidence of guilt.**
  
- II. The post-conviction relief court properly found trial counsel was not ineffective for failing to argue in his closing argument that Petitioner was not guilty rather than arguing he lacked the specific intent to kill required for attempted murder.**

## 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, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is **any** evidence in the record to support them. Id. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). 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).

## STATEMENT OF THE CASE

In November 2017, the Cherokee County Grand Jury indicted Allen Charron Williams, Jr. (Petitioner) for three counts of attempted murder and three counts of possession of a weapon during the commission of a violent crime. Petitioner was represented by Travis A. Moore, Esquire. Assistant Solicitors Kimberly Leskanic and George Matthew Kendall, Esquires prosecuted the case. On January 15, 2019, Petitioner proceeded to trial before the Honorable R. Keith Kelly. The jury found Petitioner guilty of the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN), two counts of the lesser included offense of assault and battery first degree (A&B 1<sup>st</sup>), and possession of a weapon during the commission of a violent crime. Judge Kelly sentenced Petitioner to an aggregate thirty-year term imprisonment.

Petitioner filed a timely notice of appeal on January 28, 2019. The South Carolina Court of Appeals affirmed Petitioner's convictions by unpublished opinion. State v. Williams, 2021-UP-204 (S.C. Ct. App. filed June 9, 2021). A petition for rehearing was filed on June 24, 2021 and denied on June 29, 2021. Petitioner filed a timely petition for writ of certiorari that was denied on January 13, 2022. The remittitur was issued on January 18, 2022.

Petitioner then filed a pro se application for PCR on November 15, 2022. On January 11, 2023, the State filed a return and motion for more definite statement. An evidentiary hearing was held February 13, 2023, before the Honorable Brian M. Gibbons. Rodney W. Richey, Esquire, represented Petitioner. On March 21, 2023, Judge Gibbons signed an order denying PCR. The Court found that Counsel was not ineffective for failing to argue that the State did not have any direct evidence tying Appellant to the crime and not ineffective for not making that argument in support of a directed verdict. Petitioner filed a Petition for Writ of Certiorari on October 19, 2023. This return follows.

## RELEVANT FACTS

Victim 1 (“Caleb”) testified he was working on a truck with his brother and stepfather when they started driving to burn off some gas. Caleb was in the truck bed. While they were riding around, they drove down Evans Street about four times. Caleb stated there were no cars on the road, and few people walking in the area. (App. 54-59). The last time they drove the truck down Evans Street, someone yelled “why y’all keep driving by,” and when Caleb’s stepfather stopped to tell them why they were driving around, they heard a gunshot. Caleb was hit on the face, scalp, and chest. He jumped out of the truck, and his brother pulled him through the window into the truck cab. They immediately drove home to wash the blood off Caleb and drove to the emergency room. (App. 58-60).

Doctors used tweezers to pull one of the pellets out of Caleb’s chest. Caleb was then taken to Spartanburg Memorial Hospital, where he had surgery to remove more of the pellets from his body. He testified he was shot in the cheek, right above his eye, on his eye, his right ear, and his little finger. He was shot twice in the lower abdomen, and twice in the chest. (App. 60-62).

Victim 2 (“Austin”) testified he was Caleb’s brother and was riding in the truck cab with when the shooting occurred. They were driving the truck around the neighborhood on May 9, 2017, because they had been working on the truck and thought it might have some bad gas in it that needed to be run off. The last time they drove down that street, a woman asked why they were driving around. Austin’s stepfather yelled they were working on the truck and started to go back to the house when they heard a gunshot. Austin saw Caleb jump out of the truck bed, bleeding, and he pulled Caleb through the window into the truck cab. He stated there was no other traffic, and the only people he saw were the woman who yelled at them and a man walking down the road. He testified that he never saw anyone with a gun. (App. 75).

Sierra McKinney testified she had known Petitioner since 2012, and he lived on Evans Street, right behind her sister. On the evening of May 9, 2017, McKinney was sitting with her sister and brother-in-law on the porch. They noticed a truck driving around the block multiple times, which was unusual on the scarcely traveled-on streets. (App. 78-102). McKinney saw Petitioner, who looked “aggravated,” and worried about the truck because he thought the people in it might be trying to start trouble. At one point, Petitioner put some broken bricks in the street and walked past her sister’s house carrying a “long gun.” Shortly after Petitioner walked past the house, McKinney heard a gunshot from the direction Petitioner was walking. McKinney never saw anyone else with a gun that night and testified she did not see who fired the shot. (App. 81-86).

Christa Hall testified Petitioner lived behind her sister’s home, whom she was visiting. They were on the porch when they saw a truck driving around the block multiple times. She stated they were initially curious, but learned they were “testing the truck.” (App. 104-105). She testified Petitioner was nervous about the truck and kept asking her husband and the others who they are. He threw some broken brick pieces across the road, but “not a big pile.” When Petitioner went to get the bricks, he came back with a gun. When the truck came back around, Petitioner took off running while carrying the gun. Hall heard a gunshot seconds later. She did not see who fired the gun but stated that Petitioner was the only person she saw with a gun that night. (App. 105-117).

Deputy Billy Anthony, a crime scene investigator with the Cherokee County Sheriff’s Office, testified he was called to the scene. He performed a gunshot residue test on Petitioner. After searching, the gun was not recovered by officers. After reviewing photographs of Caleb taken at the hospital, Deputy Anthony testified Caleb’s wounds were consistent with birdshot from a shotgun, which is generally a long gun. (App. 120-131).

Dr. Keith Webb, an expert in pediatric surgery, testified he removed multiple projectiles

from Caleb's body consistent with a shotgun injury. Eighteen projectiles were found in his body, but Dr. Webb was only able to remove ten. (App. 151-158).

Agent Megan Fletcher from SLED testified she analyzed Petitioner's gunshot residue kit. Her analysis revealed one particle characteristic of gunshot primer residue. She testified she could not identify the type of gun it came from, or how it got on Petitioner's hand. (R. 160-181).

## ARGUMENT

**I. The post-conviction relief court properly found trial counsel was not ineffective for arguing that Petitioner was entitled to a directed verdict due to lack of specific intent rather than because the State did not present any direct evidence of guilt.**

Petitioner contends that the PCR court erred in refusing to find trial counsel ineffective for arguing that Petitioner lacked specific intent to kill required for attempted murder and should have argued that Petitioner was entitled to a directed verdict of acquittal because the State failed to present any direct evidence of guilt and failed to present substantial circumstantial evidence of guilt.

In a PCR action, the applicant bears the burden of proving allegations contained in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in Strickland v. Washington.

Pursuant to the first prong of the Strickland analysis, the applicant must prove defense counsel’s performance was deficient. Id. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” Strickland, 466 U.S. at 688. See also Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the

reasonableness inquiry is limited to facts counsel had available at the time of representation. Id. at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. Strickland, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. Id. at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” Harrington v. Richter, 562 U.S. 86, 111-12 (2011) (quoting Strickland, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. Strickland, 466 U.S. at 680. If

there is only one line of defense, counsel must conduct a “reasonably substantial investigation” into that line of defense. Id. (quoting Washington v. Strickland, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. Id. “[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial.” Id. at 681 Id. (quoting Washington v. Strickland, 693 F.2d at 1255). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough, 540 U.S. at 5 (citing Strickland, 466 U.S. at 690).

Regarding failure to alert the Applicant of a defense specifically, Counsel will not be found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. See McCray v. State, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); Arnette v. State, 306 S.C. 556, 413 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); Robinson v. State, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by the scientific community).

In this case, Petitioner failed to prove counsel’s performance fell below an objective standard of reasonableness. At the evidentiary hearing, trial counsel testified that there were two witnesses that saw Petitioner with a gun at the scene, at the time somebody was shot, and then there was GSR on his hands. There was also testimony that Petitioner was agitated about the truck

driving on the roads. Trial counsel testified that based on the evidence stacked against Petitioner, the stronger argument was that the State failed to prove that Petitioner had specific intent to kill rather than there was no direct evidence of guilt.

Furthermore, even if trial counsel was ineffective for arguing lack of specific intent rather than no evidence, no prejudice was established.

Considering the totality of the record pertaining to the trial as well as the PCR hearing, it appears Counsel acted reasonably and therefore Petitioner cannot succeed in demonstrating that counsel was deficient, and that deficiency prejudiced him.

**II. The post-conviction relief court properly found trial counsel was not ineffective for failing to argue in his closing argument that Petitioner was not guilty rather than arguing he lacked the specific intent to kill required for attempted murder.**

Petitioner contends the PCR judge erred in refusing to find trial counsel ineffective for failing to argue to the jury in closing argument that Petitioner was not guilty and instead argued that he lacked the specific intent to kill required for attempted murder when Petitioner denied shooting the gun. Specifically, Petitioner argues that trial counsel made a concession that Petitioner was the shooter in his closing argument.

“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. 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.* “[T]he existence of detailed guidelines for representation could distract counsel from the overriding mission of vigorous advocacy of the defendant’s cause.” *Id.* at 689.

Trial 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.

The question is whether an attorneys representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690. "Under Strickland, counsel's representation must be only objectively reasonable, not flawless or to the highest degree of skill." Strickland, 466 U.S. at 688-89. Moreover, counsel's tactical decisions at trial, such as refraining from cross-examining a particular witness or from asking a particular line of questions, are given great deference and must similarly meet only objectively reasonable standards. Dows v. Wood, 211 F.3d 480, 487 (9th Cir. 2000); Dunn v. Reeves, 141 S.Ct. 2405, 2410 (2021) ("[E]ven 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.") (citation and internal quotation marks omitted).

The argument that trial counsel made a concession that Petitioner was the shooter by making the argument that the State failed to present evidence that Petitioner lacked specific intent is simply untrue. Trial counsel testified at the PCR hearing that the lack of intent argument was

the strongest argument and that it was a better trial strategy to argue that, but at no point did trial counsel state or concede that Petitioner was the shooter. In fact, in his closing argument trial counsel spent the majority of his closing argument focusing on the lack of evidence placing Petitioner behind the gun. In his closing argument he stated “The question is did the State prove to all of you unanimously beyond a reasonable doubt that Allen Williams was the one who did it; not whether it happened but did he do it.....we heard from C.D. We heard from W.D. both of them said and testified that they never saw Mr. Williams. Never saw him. Both of them testified they never saw anybody with a gun....**To be very clear, there is not any evidence from any of the witnesses in this case that saw Mr. Williams fire the shotgun.**” (App. 207-208) (emphasis added). He argued later in the closing argument that the GSR found on Petitioners hands could have come from many different places there was no evidence that it came from a gun that he fired on that day. (App. 212-213). It is only at the very end of trial counsel’s closing argument that he makes a further argument that the State did not produce sufficient evidence to show intent to kill that was required for the attempted murder charge. (App. 213-214). Narrowing in on one of the elements required for the charge is not a concession that he was the shooter, but a trial strategy because it was the strongest argument.

Further, Petitioner has failed to meet his burden in showing any resulting prejudice from the alleged deficiency because Petitioner was found guilty of the lesser included charges rather than the attempted murder charges he was originally tried for. The PCR court properly denied relief because Petitioner failed to show deficiency and resulting prejudice.

## CONCLUSION

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari. Should this Court grant the petition, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

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