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Feb 15 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Court of Common Pleas
The Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2023-001847

JEROME CAMPBELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDENT

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE PRESENTED

- I. The post-conviction relief court properly determined Petitioner failed to establish trial counsel was constitutionally ineffective for failing to object to the trial court's jury instructions because the instructions accurately and adequately conveyed the law based on the evidence presented during trial, and accordingly, any such objection to the mutual combat instruction would have been overruled, and moreover, Petitioner cannot establish the result of the trial would have been different but for counsel's failure to object to the mutual combat instruction.

STATEMENT OF THE CASE

Petitioner Jerome Campbell was tried before a jury January 23–27, 2012, for one count of murder, and three counts of assault with intent to kill (AWIK). The charges stem from a gun-fight that occurred in January 2009.

The gun-fight arose from the culmination of two underlying disputes involving Campbell's relatives. The first dispute was an over the phone argument between Campbell's mother, Sandra Campbell (Mother), and Anthony German. Mother was the maternal great-grandmother of Anthony German's new-born child. Anthony German allegedly did not want Mother to visit his child. The second dispute was an argument between Campbell's sister (Charise Coaxum) and Mother, and Coaxum's husband (Michael Allen) and brother-in-law (Frank Haigler)¹ at Coaxum and Allen's apartment. Coaxum wanted to kick Allen out of their apartment. Mother was present during the argument in support of Coaxum, and Haigler was present in support of Allen. The argument ended peacefully, and Coaxum told Allen he could come back later to the apartment; however, she would have to let him in the apartment because she kept the only key. All parties involved in the second dispute left the apartment.

Throughout the day leading up to the gun-fight, Allen and the German brothers made threats towards Campbell, and Campbell made threats towards Allen and Anthony German. Both sides were aware that threats were made. Allen, and the German brothers were aware Campbell was armed. Anthony German armed himself because of the threats Campbell had made.

The gun-fight occurred when Allen tried to return home. On his way back home, Allen was accompanied by Haigler and the German brothers. The group went inside the BP station

¹ While Haigler stated at trial that he and Allen were not related by blood, all parties refer to Haigler as Allen's brother.

across the street from Allen’s apartment complex. Allen and Haigler each purchased a beer. The group gathered in the BP’s parking lot while Allen and Haigler drank their beer. Haigler decided to scout out whether it was safe for Allen to return home. Haigler encountered Campbell in the parking lot outside Allen’s apartment. The two exchanged words, then Campbell allegedly turned and stated “Go get that. Go get that.” (App. 313). Thereafter, two men wielding shotguns exited the apartment, Campbell punched Haigler in the face, and Haigler fled. Haigler testified he was shot at twice as he fled. (App. 313–316). Haigler almost made it back to the gas station when he heard, and then saw, Campbell’s car approaching. Haigler jumped into the bushes across the street from the BP to hide. (App. 317). The evidence presented at trial suggests that gunshots came from Campbell’s car, and from the BP parking lot. (App. 234–35, 385–87, 465). Michael German was struck in the head by a ricocheted bullet. Michael German died. (App. 190–94).

Campbell was charged with the murder of Michael German. Campbell was also charged with AWIK towards Frank Haigler, Michael Allen, and Anthony German. The jury convicted Campbell as indicted, and the trial court sentenced him to serve concurrent terms of imprisonment of thirty years for murder, and ten years for each AWIK charge. (App. 782–83, 797–98).

Campbell appealed his convictions, and the court of appeals affirmed in an unpublished opinion. *State v. Campbell*, Op. No. 2014-UP-338 (S.C. Ct. App. filed August 7, 2013). Campbell commenced this PCR action on May 12, 2014. The PCR court denied Campbell’s application. Campbell then appealed to the South Carolina Court of Appeals, who affirmed the decision of the PCR court. *Campbell v. State*, 441 S.C. 361, 893 S.E.2d 492 (Ct. App. 2023). Following the denial of his petition for rehearing, Campbell filed with this Court a petition for a writ of certiorari to review the decision of the court of appeals. This Return follows.

STANDARD OF REVIEW

In a PCR case, appellate courts will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts give no deference to the PCR court's conclusions of law, and review conclusions of law de novo. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). To establish prejudice, the applicant must prove "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, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694).

ARGUMENT

- I. The post-conviction relief court properly determined Petitioner failed to establish trial counsel was constitutionally ineffective for failing to object to the trial court's jury instructions because the instructions accurately and adequately conveyed the law based on the evidence presented during trial, and accordingly, any such objection to the mutual combat instruction would have been overruled, and moreover, Petitioner cannot establish the result of the trial would have been different but for counsel's failure to object to the mutual combat instruction.

The PCR court properly found trial counsel was not ineffective for failing to object to the trial court charging mutual combat and self-defense. Campbell argues trial counsel was deficient because the mutual combat charge under-cut his requested self-defense charge in violation of South Carolina law citing *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003). However, trial counsel was not deficient because *Taylor* is distinguishable from the instant case. In the instant case, the mutual combat charge was supported by the record and any such objection would have been overruled. Campbell argues he was prejudiced by trial counsel's alleged deficiency because the mutual combat charge only served to confuse the jury as to the meaning of self-defense and shifted the burden of proof. Campbell was not prejudiced because the trial court's charge on self-defense and mutual combat was not confusing and did not shift the burden of proof away from the State. This Court should deny the petition for a writ of certiorari on that basis.

“[T]he trial [court] is required to charge only the current and correct law . . . and the law to be charged to the jury is determined by the evidence at trial.” *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003) (internal citations omitted). “[A] trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Jury instructions should be considered as a whole. *State v. Smith*, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994).

During the charge conference, trial counsel argued for the trial court to give a self-defense charge. (App. 655–667). The trial court agreed the facts supported a self-defense charge. (App. 669). The trial court charged the jury on self-defense. (App. 758–62). The trial court began its self-defense charge by stating:

The defendant has raised the defense of self-defense. Self-defense is a complete defense and if it is established, you must find the defendant not guilty. The State has the burden of disproving self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant not guilty. . . . On the other hand if you have no reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant guilty.

(App. 758). The trial court then charged the jury on the first element of self-defense:

[T]he defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense. . . .

If the defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense. This is true even if during the combat the defendant feared death or serious bodily injury. However, if before the killing is committed the defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty.

For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

(App. 759).

The PCR court found trial counsel was not ineffective for failing to object to the above referenced charge on self-defense. Specifically, the PCR court found Campbell was not deficient because the mutual combat charge was supported by the record. (App. 1098). The PCR court

concluded that Campbell was not prejudiced because an objection to the mutual combat charge would have been unsuccessful because the charge was supported by the record. (App. 1098).

Campbell argues trial counsel was deficient for failing to object to the trial court's self-defense and mutual combat charge. The crux of Campbell's deficiency argument relies on *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003). Campbell's reliance on *Taylor* is misplaced, as *Taylor* is distinguishable from the instant case. Because the record supports the mutual combat charge, trial counsel was not deficient for not objecting to the charge.

In *Taylor*, Terl Taylor was arrested for the murder of Kevin Carter. 356 S.C. at 229–31, 589 S.E.2d at 2–3. Taylor and Robert Murphy got off work and went to Angela Wallace's house to meet Wallace, Myranda Stillinger, and Carter for drinks. *Id.* at 229, 589 S.E.2d at 2. At some point in the evening, Carter and Stillinger began arguing; Taylor intervened in an attempt to stop the argument. *Id.* Thereafter, Taylor and Carter began to fight. The fight began inside, but eventually moved outside. *Id.* at 229–30, 589 S.E.2d at 2. Eventually, Taylor drew a knife from his pocket and began stabbing Carter. Taylor stabbed Carter fifteen times. An autopsy report revealed that Carter died from a stab wound to the heart. *Id.* at 230, 589 S.E.2d at 2. At trial, Taylor admitted that he stabbed Carter, but claimed he acted in self-defense. *Id.* The trial court charged self-defense; however, the trial court also charged mutual combat. *Id.* at 230–31, 589 S.E.2d at 2–3. The jury convicted Taylor of murder and possession of a weapon during the conviction of a violent crime. *Id.* at 231, 589 S.E.2d at 3. On appeal, this Court reversed Taylor's convictions.

The *Taylor* Court stated, "Because mutual combat requires mutual intent and willingness to fight, if a defendant is found to have been involved in mutual combat, the 'no fault' element of self-defense cannot be established." 356 S.C. at 232, 589 S.E.2d at 3. The Court concluded the

mutual combat charge was unwarranted because there was no evidence Carter knew Taylor was armed, and there was no pre-existing ill will between the parties. *Id.* at 234, 589 S.E.2d at 5.

Campbell suggests *Taylor* stands for the proposition that mutual combat and self-defense should not be charged together. However, *Taylor* does not stand for such. Since *Taylor*, the court of appeals has recognized that self-defense and mutual combat are not mutually exclusive. *See State v. Jackson*, 384 S.C. 29, 38 n. 5, 681 S.E.2d 17, 21 n. 5 (2009) (“We do not suggest mutual combat and self-defense are mutually exclusive; rather, in *Taylor*, there was no evidence that the victim was willing to engage in mutual combat with Taylor.”). Because mutual combat and self-defense are not mutually exclusive, trial counsel was not deficient for failing to object. Further, the mutual combat charge is supported by the record.

The mutual combat charge was supported by the evidence at trial. Specifically, Frank Haigler, Michael Allen, Anthony German, Charise Coaxum, and Mother’s testimonies. Haigler, Allen, and Anthony German’s testimonies show that their group knew Campbell was armed, and there was pre-existing ill will between the parties. Haigler stated he saw Campbell’s car drive up to the Germans’ apartment and he approached the car. He stated that as he approached the car he heard Campbell’s voice, and then the rear window rolled down and he saw a gun pointed at him. (App. 304–05). He then informed everyone to back away from the car because “[Campbell’s] got a gun.” (App. 305).

Allen testified that Campbell had threatened him earlier the day of the incident. He stated Campbell drove past the Germans’ apartment and threatened Anthony German, “I know where you live at now. I know where you live at now.” (App. 417–18). Allen stated that Campbell also threatened him, yelling, “You better not come home. I’ll be there soon.” (App. 418).

Anthony German corroborated Haigler and Allen’s testimony. German stated that he heard Campbell threaten him directly. (App. 458). German stated that he recognized Campbell, and that he saw Campbell with a gun. (App. 458–59). German also stated that before the group left his apartment complex, he armed himself with a gun for protection from Campbell. (App. 460–61).

The record also contains evidence that Campbell knew Michael Allen, and the German brothers made threats against him. Coaxum’s testimony shows that Campbell was aware Michael Allen and Anthony German had made threats on his life. Coaxum testified that Allen, her husband, sent her a text message stating, “And your brother called me a punk. Tonight we’ll see. Real niggers do real things.” (App. 495–96). Coaxum testified Allen, Haigler, and the German brothers came over to her apartment looking for Campbell because “[Campbell] told them that he was going to be [at the apartment] and [Campbell] sent them a threat.” (App. 496). Coaxum further stated that Michael Allen told her, “We are Bloods and Bloods stick together. Your brother gonna die tonight.” (App. 498). Coaxum stated that Anthony German told Mother, “Your son gonna die tonight.” (App 498). On cross-examination Coaxum stated that after the group left her apartment, “I called [Campbell] and told him that they were looking for him and they said that he was going to die tonight.” (App. 513).

Because the instant case is distinguishable from *Taylor*, and because the mutual combat charge is supported by the record, the PCR court properly found trial counsel was not deficient for failing to object to the trial court charging mutual combat and self-defense.

Campbell was not prejudiced because the trial court’s charge did not shift the burden of disproving self-defense away from the State. The trial court properly submitted to the jury the question of whether Campbell was at fault in bringing on the difficulty. As stated above, the trial court charged the jury on the elements of self-defense. In charging the first element of self-defense,

the trial court charged the law on mutual combat. The trial court charged that if the jury found Campbell engaged in mutual combat, then the State had met its burden of disproving the first element of self-defense. The trial court's instructions did not shift the burden of proof away from the State; therefore, Campbell was not prejudiced by the trial court charging mutual combat and self-defense.

The PCR court correctly found trial counsel was not ineffective for failing to object to the trial court charging mutual combat and self-defense. The court of appeals correctly affirmed the decision of the PCR court.

In his petition for a writ of certiorari, Campbell appears to suggest that the only permissible purpose of a mutual combat charge is to reduce murder to voluntary manslaughter. This argument is based on a handful of South Carolina cases published between 1843 and 1910, as well as cases from other states, and completely ignores the last hundred years of development of the mutual combat doctrine in South Carolina. However, the Court need not consider this dubious argument, as it was not presented to the PCR court or the court of appeals and is, therefore, not preserved for review. *See* Rule 242(d)(2), SCACR (“Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.”). “An issue not raised to or addressed by the trial court or the Court of Appeals is not properly preserved for review by the Supreme Court on certiorari.” *Kleckley v. Nw. Nat. Cas. Co.*, 338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000).

CONCLUSION

For the reasons given above, the court of appeals correctly affirmed the decision of the PCR court. Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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