THE STATE OF SOUTH CAROLINA
In the Court of Appeals

On Writ of Certiorari from Saluda County

The Honorable J. Michael Baxley, Trial Judge
The Honorable Debra R. McCaslin, Post-Conviction Relief Judge

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Appellate Case No. 2021-000783

GERALD R. WILLIAMS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT

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Petitioner's Issue Statement

Whether the PCR judge erred in finding that trial counsel was not ineffective for failing to object to the trial judge's improper instruction that attempted murder was not a specific-intent crime, where the Supreme Court's opinion in *State v. Sutton*, 340 S.C. 393, 532 S.E.2d 283 (2000) had been decided and found that although attempted murder was not a recognized crime in South Carolina at that time, attempted murder would require the specific intent to kill the victim?

Respondent's Counterstatement

Whether the PCR court erred in finding that trial counsel was not ineffective for failing to object to the trial court's jury instruction that attempted murder was not a specific intent crime.

STATEMENT OF THE CASE

In July 2013, a Saluda County grand jury indicted Gerald R. Williams ("Petitioner") on three counts of attempted murder. (App. 1094-95, 1097-98, 1100-01). Between October 14-17, 2023, Petitioner proceeded to a jury trial before the Honorable J. Michael Baxley. (App. 1).

At trial, Major Robert Shorter, an investigator with the Saluda County Sheriff's Office, testified that on April 12, 2012, an officer with the Williston Police Department in Barnwell County advised him that a teal green Ford Windstar van might be headed from Barnwell County to Saluda County. (App. 152). One of the van's occupants, O.J. Charley ("Charley"), was armed and dangerous and, along with other occupants of the van, was planning to retaliate against A.J. Young ("Young") for a prior incident. (App. 152-53). Major Shorter alerted on-duty officers in Saluda County of this information. (App. 152). He believed that Young "might be hiding out" at a mobile home on Shadow Ridge Court in Saluda County. (App. 153). Major Shorter, who was the on-call supervisor on April 12, 2012, received a call that night of a shooting at the mobile home on Shadow Ridge Court. (App. 159). He went to the scene. (App. 159). When he arrived, other officers had already secured the scene and had Charley and Petitioner in custody. (App. 159-60). Three individuals—Young, Joseph Wrighton ("Wrighton"), and Ycedra Williams ("Ycedra")—were in the residence at the time of the shooting. (App. 160). Major Shorter testified that Young had just over $20,000 in cash on his person and a .40 caliber handgun in his room in the residence. (App. 182).

Major Shorter stated that the first deputies to respond to a 911 call from the mobile home went by an unoccupied van matching the description he received from the Williston Police on their way to the mobile home. (App. 161). The next set of officers to pass the van saw Charley and Petitioner at the van and detained them. (App. 161). Once Major Shorter and the other officers

were all at the scene, they conducted a "routine investigation," which included collecting evidence from the scene, interviewing witnesses, taking statements, and returning the following morning to collect evidence in the daylight. (App. 159-60, 183). Major Shorter observed multiple bullet holes in the residence and the front door that indicated shots had been fired into and out of the residence. (App. 162). He had the front door of the mobile home removed, and the door was entered into evidence at trial. (App. 178-79). Major Shorter stated that one of the bullets hit the electrical panel of the residence and knocked out electricity to the entire residence. (App. 162).

The officers used bloodhounds to determine whether shooters other than Charley and Petitioner were present at the scene but concluded that no one else was involved because the bloodhounds only tracked back to the green Windstar van. (App. 183-84). The officers found two handguns, intact blue or purple rubber gloves, and fragments of rubber gloves on the ground near the mobile home's mailbox. (App. 185-89, 198). Major Shorter suspected that the shooters had been heading towards the van from the residence and dropped the firearms and ripped off their gloves in haste. (App. 189-90). He called the detention center to see if glove fragments had been found on either Charley or Petitioner. (App. 189-90). An officer at the detention center found parts of a rubber glove stuck to Petitioner's fingers, and Major Shorter collected the glove pieces as evidence. (App. 190, 209). In the residence, Major Shorter also found shell casings and a white powdery substance in small baggies. (App. 194-96). The substance was later determined to not be narcotics. (App. 194-96).

Major Shorter testified that no samples were collected for gunshot residue testing because both Petitioner and Charley were wet due to the weather conditions on the night of the shooting. (App. 201). He explained that water can affect the results of a gunshot residue test. (App. 201). Major Shorter stated that he did not request gunshot residue testing on the gloves because he did

not think it would be an effective test. (App. 204). He did, however, order DNA tests on the evidence collected at the scene. (App. 205).

Saluda County Sheriff's Office Investigator Jesse Quattlebaum testified that he searched the van after other officers arrested Charley and Petitioner. (App. 339). In the van, he found a partially torn rubber latex glove. (App. 339). Investigator Quattlebaum testified that of the two guns found near the driveway of the mobile home, one was a .40 caliber handgun that had an empty magazine and the other was stove-piped,[1] rendering it inoperable. (App. 343-45).

SLED Agent Hue Tang testified as an expert in fracture matching identification. (App. 562-65). He testified that he was unable to match any of the various glove fragments collected by law enforcement because there were some missing pieces. (App. 567).

Ycedra testified that she was Petitioner's second cousin and that Wrighton was her husband. (App. 217-19). Ycedra testified that the mobile home belonged to Mike and Felicia Barlow and that nine people in total resided in the home not long before the shooting, although only she, Wrighton, and Young were present the night of the shooting. (App. 218-220, 225). Approximately three to five days before the incident, Ycedra saw Young shooting a .40 caliber handgun in the backyard of the mobile home and noticed that he started carrying the handgun with him around the same time. (App. 222-23). A day or two before the shooting, Ycedra encountered five individuals, whom she did not know well, in a van at the residence looking for Young and asking for his phone number. (App. 221-22). Petitioner was not among the van's occupants. (App. 240).

Ycedra testified that on the night of the shooting, she and Wrighton had been playing video

[1] A stove-piped malfunction occurs when a shell casing does not properly eject and prevents another round from loading. (App. 344-45).

games, and they heard a dog start barking. (App. 231). She looked out the window and saw two people walking towards the home. (App. 231-32). She yelled for Young in case he was one of the people walking outside the home, and Young came out of another room and told Ycedra to turn off the lights. (App. 231-32). Ycedra could not make out the identities of those outside as she could only see their silhouettes. (App. 240). She stated that as Wrighton went to the door, the individuals outside fired on him. (App. 232-33, 243). Wrighton threw her to the floor. (App. 243). Ycedra testified that Young stayed inside the home through the entire incident and fired two to three shots back. (App. 234-35). Ycedra heard the bullets coming into the home through the walls and knew that "[i]t was a lot." (App. 233-34).

According to Ycedra, the shooting from outside stopped after Young shot back. (App. 234). When the shooting stopped, she called the police. (App. 233). The police arrived, spoke with her and Wrighton briefly, and left to find the shooters. (App. 233). Ycedra told the officers only she and Wrighton were in the home, which she acknowledged on the stand was a lie. (App. 235). She lied because she was grateful that Young had saved her by returning fire; nevertheless, the officers arrested Young when they found him. (App. 235, 249). Ycedra admitted that she pleaded guilty to giving false information to police because she lied to the officers about Young's presence at the home. (App. 237).

Wrighton testified that he was standing at the door when the shooting started and had been looking outside of the home because Ycedra saw a dog moving outside. (App. 255, 261). He testified that the bullets almost struck him and that he threw his wife to the floor. (App. 256). He stated that the shooting stopped after Young returned fire to those outside and that Ycedra called 911. (App. 257). Wrighton testified that he and Ycedra told the responding officers that Young was not there because they were grateful and Young had asked them to do so. (App. 258). He

confirmed he had been convicted of lying to the officers. (App. 258).

Young testified that law enforcement took him into custody after the shooting. (App. 271). He stated that Charley gave him $26,000, with which Young was supposed to buy drugs for Charley.[2] (App. 272-73, 281-83). Instead, Young intended to keep Charley's $26,000 and rip off Charley. (App. 272-73, 281-83). He believed that Charley would not retaliate against him. (App. 273). However, Young bought a .40 caliber handgun before the shooting, which he practiced firing it in the mobile home's backyard. (App. 274). He confirmed this was the same gun that law enforcement found in his room after the shooting. (App. 274).

On the night of the shooting, Young was in his bedroom when a dog began barking outside the home. (App. 273, 275). When he heard Ycedra yell out, he directed her to shut off the lights. (App. 275). He testified that Ycedra called 911 and that Wrighton went to the door, at which point the shooting began and Wrighton dropped to the floor. (App. 275-76). Young returned fire but never went outside of the home. (App. 276, 286). He testified that he fired his handgun only about three to four times. (App. 290). After the shooting, Young told Wrighton and Ycedra to tell the officers that he was not present because, unbeknownst to them, he had a warrant out for his arrest. (App. 276-77).

Charley testified that Young robbed him using a .40 caliber handgun a few days before the shooting, taking $32,000 from him. (App. 581). He stated that Young indicated he would shoot anyone who came to the mobile home to get the money back. (App. 584). He claimed that he asked Rico Riverez, who allegedly had weapons, to go with him to the mobile home so that Charley could retrieve the money. (App. 586). Charley testified that he offered to pay Petitioner to drive

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[2] Young wrote in his statement that Charley had given him $32,000 but explained at trial that Charley had given him $26,000 and he contributed $6,000 of his own money. He hid his $6,000 so that he would have it when he got out of prison. (App. 281, 284).

and only told Petitioner that he was going to meet some girls. (App. 586-87). Charley testified that nothing in the van would have given away his true intentions to Petitioner. (App. 588). Charley claimed that Riverez followed Charley and Petitioner's van on the night of the shooting. (App. 589-90). He testified he asked Petitioner to park the van away from the mobile home so that Young would not see anyone coming and told Petitioner to wait with the van while he checked on the girls. (App. 590-92). Charley testified that Riverez handed him a Tec-9 and kept a .40 caliber handgun for himself. (App. 592).

Charley claimed that when he and Riverez arrived at the mobile home, Young exited the mobile home and shot twice into the air, which led Charley and Riverez to return fire into the air. (App. 593-94). He testified his gun jammed and he ran away. (App. 594). Charley stated Riverez may have shot at the mobile home but he did not know what happened to Riverez. (App. 594-95). He testified that after the shooting, he found Petitioner still in the van, that he asked Petitioner to "ease off" when the officers who arrived did not approach the van, and that they surrendered once the officers blocked them in. (App. 595-98).

On cross-examination, Charley admitted that he had been lying during his testimony on direct examination to help Petitioner. (App. 605). He confirmed that he lied about Riverez. (App. 611). According to Charley, he went to the mobile home with Petitioner to retrieve the money from Young, he and Petitioner shot at the mobile home, "ditched" some gloves, and ran away. (App. 612). Charley testified that Petitioner knew of his plans but did not have a gun, so he gave the .40 caliber handgun to Petitioner. (App. 612, 617). He admitted that he and Petitioner had worn rubber gloves to keep from leaving DNA or fingerprints behind, but Petitioner left his gloves at the scene. (App. 613-14). Charley claimed that he did not shoot up the mobile home and therefore Petitioner must have done so. (App. 616). He testified that Petitioner fired a weapon,

but denied knowing in which direction Petitioner's bullets went. (App. 618). Charley admitted that he had tried to help Petitioner by lying to the jury and apologized for having done so. (App. 631).

After the defense rested, the trial court charged the jury, including the following:

> A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury. Intent means intending the result that actually occurs, not accidentally or involuntarily.

(App. 703). At no point did Petitioner's counsel object to this portion of the jury charge. (App. 715-23). The jury found Petitioner guilty of the attempted murders of Young, Wrighton, and Ycedra, as indicted. (App. 722-23). The trial court sentenced Petitioner to twenty years' imprisonment for each charge, all to run concurrently. (App. 738).

Trial counsel filed a timely notice of appeal. On February 27, 2015, Petitioner's appellate counsel filed an *Anders*[3] brief and a motion to be relieved as counsel. (App. 743-55). Petitioner filed a pro se *Anders* response. (App. 756-66). This Court denied appellate counsel's motion to be relieved and directed the parties to brief issues of arguable merit, including: (1) whether the trial court erred in refusing to instruct the jury on the lesser-included offense of first-degree assault and battery and (2) whether the trial court erred in instructing the jury on the doctrine of transferred intent. (App. 767-77).

On April 6, 2016, appellate counsel filed a brief, raising only the two arguments specifically requested by this Court. (App. 769-82). On May 19, 2016, Respondent moved to hold the appeal in abeyance, noting that this Court had recently issued its opinion in *State v. King*,[4] until such time as the South Carolina Supreme Court could review this Court's opinion in *King*. (App. 783-816).

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[3] *Anders v. California*, 386 U.S. 738 (1967).
[4] 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015).

This Court denied Respondent's motion to hold the appeal in abeyance. (App. 817). This Court subsequently affirmed Petitioner's convictions and found that the trial court committed harmless error in declining to instruct the jury on the lesser-included offense of first-degree assault and battery and that the trial court did not err in instructing the jury on transferred intent. *See State v. Williams*, 422 S.C. 525, 533-43, 812 S.E.2d 917, 921-26 (Ct. App. 2018). Further, this Court stated in its opinion that "[i]n the instant case, evidence supports the finding that [Petitioner] and Charley specifically intended to commit murder." *Id.* at 542, 812 S.C. at 926.

On June 21, 2018, appellate counsel filed a petition for a writ of certiorari with the Supreme Court, arguing that this Court erred (1) in affirming the trial court's instructing the jury on transferred intent for attempted murder and (2) in finding that the trial court's refusal to instruct the jury on the lesser-included offense of first-degree assault and battery was harmless. (App. 864-82). The Supreme Court granted appellate counsel's petition. (App. 905-06). After oral argument, the Supreme Court affirmed this Court as modified. *See State v. Williams*, 427 S.C. 148, 829 S.E.2d 702 (2019); (App. 953-62). The remittitur was issued on June 27, 2019.

On July 25, 2019, Petitioner filed an application for post-conviction relief ("PCR"), raising multiple claims, including ineffective assistance of trial counsel and ineffective assistance of appellate counsel. (App. 963-98). On May 4, 2020, the State filed its return to Petitioner's PCR application and requested an evidentiary hearing on Petitioner's issues. (App. 999-1013). On April 28, 2021, Petitioner proceeded to an evidentiary hearing before the Honorable Debra R. McCaslin (the "PCR court") via WebEx. (App. 1014). At the hearing, Petitioner proceeded upon three of his claims, including that trial counsel was constitutionally ineffective for failing to object to the trial court's instruction to the jury that specific intent to kill is not an element of attempted murder.

At the PCR evidentiary hearing, Petitioner's trial counsel, Bennett E. Castro, stated that he did not object to the jury charge on specific intent because he believed the charge was proper at the time of trial. (App. 1038-39). He acknowledged that section 16-3-29 of the South Carolina Code, which codified attempted murder, had been passed by the General Assembly in 2010. (App. 1038). He testified that the Supreme Court's opinion in *State v. King*,[5] which clarified that attempted murder is a specific intent crime, was not handed down until several years after Petitioner's trial. (App. 1038-39). Trial counsel did not have the benefit of relying on the *King* opinion, which he acknowledged settled any ambiguity in his mind on the required intent for attempted murder. (App. 1038-39).

Appellate counsel testified that he opposed the State's motion to hold Petitioner's direct appeal in abeyance pending the Supreme Court's consideration of *King*, because he did not know what the Supreme Court would decide and the law, after this Court's decision in *King*, was favorable to Petitioner. (App. 1063).

In its order dismissing Petitioner's PCR application, the PCR court noted that the attempted murder statute was codified in 2010, which was only a few years before Applicant's trial. (App. 1078-79). The PCR court identified the specific intent jury charge that the trial court gave, found it was given without objection from trial counsel, and noted that the required intent for attempted murder had not been blessed with obvious clarity, as stated by the Supreme Court in *King*. (App. 1079-81). The PCR court stated that (1) the Supreme Court had acknowledged in *King* that South Carolina had seen "conflicting" authority on the levels of criminal intent; (2) the Supreme Court referred to the language of the attempted murder statute containing "ambiguity"; (3) the Supreme Court opined that this Court' opinion in *King* could have been clearer; (4) Justice Kittredge wrote

[5] 422 S.C. 47, 810 S.E.2d 18 (2017).

in his concurring opinion in *King* that the question of whether attempted murder is a specific intent crime was a difficult one; and (5) the Supreme Court requested the General Assembly to revisit the language of the statute. (App. 1081-82).

The PCR court found that at the time of trial, trial counsel did not have the benefit of reliance on the Supreme Court's opinion in *King* and did not know that attempted murder was a specific intent crime. (App. 1082). The PCR court found that appellate counsel was also unsure of how the Supreme Court would interpret the attempted murder statute as evidenced by his opposition to the State's motion to hold Petitioner's direct appeal in abeyance due to the uncertain outcome of *King* at the Supreme Court. (App. 1082). The PCR court quoted from the Supreme Court's opinion in Petitioner's direct appeal that "[t]o be fair to counsel, at the time of [Petitioner's] trial, [the Supreme Court] had not yet handed down [its] decision in *King*, in which a majority of [the Supreme Court] held attempted murder was a specific-intent crime." *Williams*, 427 S.C. at 154 n.5, 829 S.E.2d at 705 n.5. The PCR court concluded that to require trial counsel to correctly assess the intent requirement for attempted murder at the time of trial, which was well before either of our appellate courts had settled the matter, would be to hold trial counsel to a standard greater than that of any competent attorney.

This appeal followed.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue before the court. *Smalls v. State*, 422 S.C. 174, 181, 810 S.E.2d 836, 839 (2018). Appellate courts will defer to a PCR court's findings of fact and will uphold them if evidence in the record supports the findings of fact. *Id.* Appellate courts review questions of law de novo with no deference to the conclusions of the PCR court. *Id.* Appellate courts will reverse the decision of the PCR court when such a decision is controlled by an error of law. *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

I. The PCR court correctly found that Petitioner failed to prove that trial counsel provided ineffective assistance of counsel by failing to object to the trial court's jury instruction that attempted murder was not a specific intent crime because South Carolina law on the required intent for attempted murder at the time of trial was not readily clear.

The PCR court did not err in finding that trial counsel did not provide ineffective assistance because evidence in the record shows Petitioner failed to prove that trial counsel's performance was deficient and that such deficient performance prejudiced him such that the outcome of his trial would have been different but for trial counsel's performance.

A two-prong test for determining effective assistance of counsel has been set forth by the Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 668 (1984). First, a defendant must show that counsel's performance was deficient. Under this prong, "[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Id.* at 688. The second prong of the *Strickland* test requires a showing that the deficient performance prejudiced the defendant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 669. The defendant is required to overcome the presumption that counsel was effective to receive relief. *See Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A. Deficiency

The PCR court properly determined that Petitioner failed to prove that trial counsel's performance was not reasonable under prevailing professional norms. *See Cherry*, at 117, 386 S.E.2d at 625 (stating that under the deficiency prong, courts are to evaluate an attorney's performance by its "reasonableness under prevailing professional norms" (quoting *Strickland*, 466 U.S. at 688)); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The proper measure

of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases.").

As noted by the PCR court, section 16-3-29 of the South Carolina Code (2015), which defines attempted murder, was codified in 2010 and states in relevant part: "A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." (App. 1078). Section 16-3-29 was enacted only a few years prior to Petitioner's trial. (App. 1, 1079).

At the time of Petitioner's trial in 2013, neither this Court nor the Supreme Court had issued an opinion upon the required intent—specific or general—required under the statute. The PCR court recognized this lack of clarity in its order dismissing Petitioner's PCR application. (App. 1081-83). Citing to the Supreme Court's divided opinion in *State v. King*, the PCR court emphasized that the Supreme Court (1) agreed with the State that this Court based its conclusion in its opinion in *King* on dicta from *State v. Sutton*,[6] (2) acknowledged that South Carolina has been afflicted with conflicting case law on the required intent in criminal cases, and (3) noted the ambiguity of the required intent under the attempted murder statute. (App. 1081); *King*, 422 S.C. at 55-62, 810 S.E.2d at 22-26. In deciding *King*, the Supreme Court majority was concerned enough to specifically request that the General Assembly reevaluate the language of the section 16-3-29 to clarify the intent requirement. *Id.* at 64 n.5, 810 S.E.2d at 27 n.5.

Trial counsel did not have the benefit of the Supreme Court's opinion in *King* at the time of trial. Trial counsel testified that he believed the trial court's jury charge was proper at that time

[6] 340 S.C. 393, 397, 532 S.E.2d 283, 285 (2000) (stating that attempted murder *would* require specific intent to kill if South Carolina recognized the crime of attempted murder, which at the time of this opinion, it did not).

and any ambiguity he had over the intent requirement was clarified only when the Supreme Court handed down *King* in 2017. (App. 1038-39).

Appellate counsel opposed the State's motion to hold Petitioner's direct appeal in abeyance because the outcome of *King* at the Supreme Court was uncertain when Petitioner's direct appeal was pending, which suggests appellate counsel was unsure of how the Supreme Court would interpret the attempted murder statute. (App. 1082).

As the PCR court properly determined, considering the Supreme Court's emphasis in *King* on the ambiguity of the attempted murder statute, trial counsel's erroneous understanding of the intent requirement under attempted murder statute was not unreasonable. (App. 1082). Trial counsel simply had no way of knowing with any certainty that attempted murder was a specific intent crime at the time of trial, which the Supreme Court itself remained divided on in the *King* matter. Further, the Supreme Court noted in its opinion on Petitioner's direct appeal that the intent required for attempted murder was not decided at the time of Petitioner's trial. *See State v. Williams*, 427 S.C. 148, 154 n.5, 829 S.E.2d 702, 705 n.5 (2019) ("To be fair to counsel, at the time of [Petitioner's] trial, we had not yet handed down our decision in *King*, in which a majority of [the Supreme] Court held attempted murder was a specific-intent crime."); *Thornes v. State*, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765-66 (1993) (stating that an attorney has never been required to anticipate or discover changes in the law or facts which did not exist at the time of trial); *Dunn v. Reeves*, 594 U.S. 731, 739 (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." (quoting *Harrington v. Richter*, 562 U.S. 86, 104 (2011))). Therefore, the PCR court did not err in finding that Petitioner failed to prove that trial counsel was deficient.

B. Prejudice

First, should the Court determine that the PCR court properly found that trial counsel did not provide deficient representation for failing to object to the specific intent jury charge, then the Court need not consider the prejudice prong of the *Strickland* ineffective assistance of counsel test. *See Strickland*, 466 U.S. at 700 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.").

Second, should the Court decide to address the prejudice prong, any argument that the PCR court erred in finding trial counsel's performance prejudiced Petitioner is not preserved for appellate review. *See Pruitt v. State*, 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992) (stating that to preserve issues for appellate review "after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by [section] 17-27-80 and Rule 52(a), SCRCP"). The PCR court found only that Petitioner "failed to prove that trial counsel's understanding at the time of trial that attempted murder was a general-intent crime was deficient." (App. 1083). Nowhere in the order of dismissal does the PCR court address the prejudice prong for any of Petitioner's claims, including his claim regarding the specific intent jury charge. Therefore, as this argument was not ruled upon by the PCR court, it is not preserved for appellate review.

Third, should the Court hold that Petitioner's prejudice prong argument is preserved for appellate review and decide to address the issue, Petitioner failed to prove that any prejudice resulted from trial counsel's decision not to object to the intent jury charge. *See Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625 (stating that a PCR applicant must prove that their counsel's deficient

performance prejudiced them such that "there is a reasonable probability that, but for [the lawyer's] unprofessional errors, the result of the proceeding would have been different").

This Court, in its opinion in Petitioner's direct appeal, has already held that "evidence supports the finding that [Petitioner] and Charley specifically intended to commit murder." *Williams*, 422 S.C. at 542, 812 S.E.2d at 926, *affirmed as modified*, 427 S.C. 146, 829 S.E.2d 702 (2019). Trial testimony established that Petitioner went to the mobile home with loaded weapons, intending to assist Charley in getting Charley's money back from Young and with full knowledge of the reason for going. (App. 611-31). Testimony indicated Petitioner shot multiple shots into the exterior walls and doors of the mobile home after Ycedra told Young that someone was outside and after Wrighton appeared at the door of the residence. (App. 231-33, 255-57, 273-75). The evidence from trial indicates that Petitioner went with Charley to the mobile home intending to kill Young and to get Charley's money back; thus, Petitioner's actions of shooting multiple rounds at a dark figure visible through a door window represented an attempt to kill another person with malice aforethought. (App. 611-31).

The evidence also indicated that Charley knew Young did not live at the mobile home alone. (App. 221-22). Therefore, it was foreseeable that Young would not be alone, especially considering Young lived at the mobile home with eight other people. As this Court has previously indicated, "when someone points and fires a deadly weapon multiple times at a group of people he knows are in the line of fire, . . . a rational juror could infer the shooter intended to murder whoever may have been injured in that group." *State v. Devonta Edward Williams*, 437 S.C. 100, 105, 876 S.E.2d 324, 327 (Ct. App. 2022); *see also id.* at 106, 876 S.E.2d at 327-28 ("[W]e seek only to recognize that the jury may infer specific intent to kill multiple people if the circumstances allow.").

Thus, Petitioner did not show a reasonable probability that the result of the proceeding would have been different but for trial counsel's alleged deficiency of failing to object to an erroneous jury charge.

CONCLUSION

Based on the foregoing, the PCR court correctly determined that Petitioner failed to show that trial counsel provided ineffective assistance at trial for not objecting to the trial court's jury charge that attempted murder was not a specific intent crime. Therefore, this Court should affirm the denial of Petitioner's PCR application.

Respectfully submitted,

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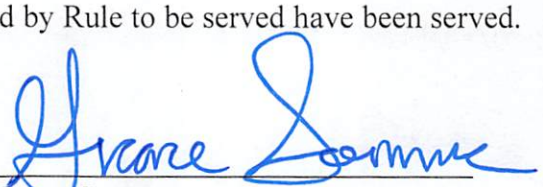
PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Brief of Respondent on Gary H. Johnson, II, 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 27th day of June, 2024.



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Sent: Thursday, June 27, 2024 9:46 AM
To: Johnson, Gary
Cc: Brian Gibbs; Warren, Kaylynn; William Corbett
Subject: Gerald R. Williams v. State of South Carolina (2021-000783)
Attachments: WILLIAMS Gerald - BOR (03617929xD2C78).PDF

Good Morning Mr. Johnson,

Attached please find a Brief of Respondent in Gerald R. Williams v. State of South Carolina (2021-000783). This Brief will be filed with the South Carolina Court of Appeals today via AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

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