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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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*Certiorari to Greenville County*

The Honorable Edward W. Miller, Plea Judge  
The Honorable Eugene C. Griffith, Post-Conviction Relief Judge

Appellate Case No: 2022-001571

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ANGELO HORACE TAYLOR,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

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**BRIEF OF PETITIONER**

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ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

ATTORNEYS FOR PETITIONER

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## **PETITIONER'S STATEMENT OF THE ISSUE**

Did the PCR court err in finding that Taylor proved that plea counsel was constitutionally ineffective for giving inaccurate advice about Taylor's parole eligibility when the court found that Taylor satisfied his burden merely because his testimony was not contradicted, which constituted a legal error and improperly shifted the burden to the State?

## STATEMENT OF THE CASE

Respondent Angelo Horace Taylor is presently imprisoned in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its February of 2018 term, the Greenville County Grand Jury indicted him for murder (2016-GS-23-002378), possession of a weapon during the commission of a violent crime (2016-GS-23-002378) and attempted armed robbery (2016-GS-23-002379).

On September 18-19, 2018, Taylor proceeded to a jury trial. The Honorable Edward W. Miller (“the plea court”) presided. C. Carlyle Steele (“plea counsel”) represented Taylor at trial. Elizabeth Coble Major (“the solicitor”) of the Thirteenth Circuit Solicitor’s Office, prosecuted the case. While the jury was deliberating,<sup>1</sup> Taylor entered guilty pleas pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to involuntary manslaughter, and attempted armed robbery. In accordance with the plea agreement, the solicitor dismissed the weapon charge. The solicitor asked the court to impose a sentence of twenty-five years imprisonment. Plea counsel requested that the court sentence Taylor to time served and probation, indicating that Taylor had already been in custody for “a long time” (1019 days) by the time of trial. (*See App. 361-362 and 359*). Judge

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<sup>1</sup> The jury deliberated approximately 2 hours, from 12:06 pm to 2:29 pm, before reporting to the court by note, “The jury is unable to reach a consensus.” (*App. 354*). Rather than give an *Allen* charge at that time, the judge merely requested the jury, by note, to “[p]lease continue to deliberate.” (*App. 354*). The jury continued deliberations for over another hour (2:33 pm to 3:52 pm) and sent out another note that they were deadlocked, though they had some agreement:

THE COURT: Okay, We’ve got a note from the jury that says that the jury is deadlocked - - I’m not going to tell you the number - - on two of the charges. So they made a decision on one and they are deadlocked on the other two.

(*App. 355*). The judge then gave an *Allen* charge over the defense’s objection that the charge would place undue pressure on the jury to agree and therefore the charge would be prejudicial to Taylor. (*App. 355-358*). The jury began deliberations again at approximately 4:04 pm. (*App. 358*). The plea occurred after the jury began deliberations again at this point. (*App. 358*). Sentencing concluded at 4:35. (*App. 363*).

Miller sentenced Taylor to imprisonment for twenty years for attempted armed robbery and five for involuntary manslaughter, both sentences running consecutively, and credit for time served. (App. 363). Taylor did not appeal his convictions or sentences.

Taylor filed his *pro se* application for post-conviction relief on August 9, 2019, raising multiple claims: (1) 6<sup>th</sup> Amendment; (2) 14<sup>th</sup> Amendment; and (3) Ineffective assistance of counsel.<sup>2</sup> (App. 404-410). On January 7, 2020, the State made its return to the application, moved for a more definite statement, and requested a hearing on the ineffective assistance of counsel allegation. (App. 413-425). Taylor’s appointed lawyer, Susannah Ross Esq., subsequently filed an amendment to the application on March 13, 2020, and raised the following claims: (1) ineffective assistance of trial counsel for advising the applicant the attempted robbery was [a] charge that maxed out at 65% when it is an 85% charge; and (2) Due Process violations because the plea was not knowingly and voluntarily made due the applicant’s not understanding the maximum sentence he faced when he plead guilty. (App. 427).

An evidentiary hearing convened, via Webex before the Honorable Eugene C. Griffith, Jr. (“the PCR court”) on March 21, 2022. Taylor was present at the hearing and represented by Susannah Ross Esq. Assistant Attorney General Taylor Zane Smith of the South Carolina Office of the Attorney General represented the State. (App. 365). At the start of the hearing, counsel for Taylor clarified that it was Taylor’s position:

... that he did not realize he was, you know, facing an 85 percent charge with that attempted armed robbery and thought that it was being treated as a 65 percent charge. He didn’t realize it was a no-parole offense, which it was.

Also, just looking through the plea colloquy, I would argue there were due process violations under Pittman v. State and Rule

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<sup>2</sup> In response to question eleven, which asks an applicant to state concisely the facts which support each allegation, Taylor indicated a memorandum of law was attached to his PCR application. (See App. 406). However, the State has no record or copy of such memorandum.

11 showing that the applicant didn't have a full understanding of the maximum sentence he could face when he pled guilty.

(App. 368, lines 16-25) (*See also* App. 385, "... our claims are limited to ... whether there were due process violations in the plea itself because it didn't comply with Rule 11 going through all the details that normally are in the plea colloquy and then the misadvising on the parole eligibility.").

Applicant testified on his own behalf at the hearing and the State called plea counsel, Mr. Steel. (*See* App. 366). At the end of the hearing, the PCR court took the matter under advisement. (App. 388). Judge Griffith subsequently issued an order on August 17, 2022, that granted relief and ordered the "sentence and convictions" be vacated, and the charges remanded to the court of general sessions. (App. 429-433). That order was filed with the Greenville County Clerk of Court on September 14, 2022, and hand-delivered to the parties by the Clerk on that same day.

On September 21, 2022, the State served a motion to alter or amend the judgment, pursuant to Rule 59(e), SCRCF, requesting that the PCR Court alter or amend its findings as to the deficiency and prejudice prongs of *Strickland v. Washington*, 466 U.S. 668 (1984), and reverse its grant of relief to Taylor. (App. 436-441). The PCR court denied the motion in an order issued on October 1, 2022. (App. 485).

The State filed the Notice of Appeal on November 7, 2022, and subsequently filed its petition for certiorari and appendix on March 22, 2023. Taylor, through appointed counsel, filed the return on April 20, 2023. On May 9, 2023, our Supreme Court transferred the case to the Court of Appeals. This Court granted the State's petition on May 21, 2024, and ordered the parties to file the appendix and briefs as provided by Rule 243(j) SCACR. This additional briefing follows.

## PETITIONER'S STATEMENT OF FACTS

Michael Rosemond was working as the security guard supervisor at a registration desk at a hospital in Greenville County on December 5, 2015. A light-skinned black man in his early twenties, who Rosemond believed to weigh about 140 pounds, had run inside and yelled for help to bring his friend, Jermaine Cureton (“the victim”), inside. The man said that the victim had been shot. (App. 21-22). Rosemond helped the victim from the front passenger seat of a red Dodge sedan and into the emergency room. (App. 10, 20-21, 23-26, 142). The victim had been shot twice in his left side and had a shallow abrasion to the right side of his head. (App. 171, 188). The victim had also been accompanied by a dark-skinned black man in his early to mid-twenties who Rosemond believed to weigh about 215 pounds. (App. 22). Rosemond stayed outside with the two men to get more information from them while others took the victim inside the hospital. (App. 22). The light-skinned man appeared to be concerned about the victim’s welfare, but the dark-skinned man appeared nonchalant and instructed his light-skinned companion to “[s]hut the [fuck] up.” (App. 23). Rosemond called dispatch to report the matter and then saw medical professionals stop performing chest compressions on the victim and call his time of death. (App. 24). The victim’s cause of death was ultimately ruled a homicide by gunshots. (App. 199). The two men left the hospital to get the victim’s family and then later returned with some of the victim’s family members. (App. 25). Rosemond thought that the events took place before midnight and remembered that it had been dark outside at the time. (App. 25).

Jermaine McCombs, who was in prison at the time of trial for a probation violation, testified that he had known the victim since 2008 and that they had been friends. (App. 28-30). McCombs went by the nickname “Little Mane” and the victim went by “Big Mane.” (App. 29). On the night of December 4 or the early morning of December 5, the victim picked up McCombs

from his home in Greenville planning to buy liquor and also for the victim to sell marijuana to Devashio Brown, who went by the nickname “Doodoo.” (App. 31, 39). The victim was driving his red Dodge sedan. (App. 32). When they arrived at the West View apartment complex where Brown lived, it was late and dark outside. (App. 31). Brown got in the car and bought marijuana, and then left to get more cash because he was short. (App. 32). Two men, one of whom was Taylor, walked up to the car, and Taylor pointed a firearm at the victim. (App. 32-35). McCombs was able to recognize Taylor because his face was not covered and because he knew him prior to this interaction. (App. 35-37). He gave Taylor’s nickname as “A-Lo.” (App. 60). Taylor instructed the victim to “give it up.” (App. 36-37). McCombs did not know if the second robber was pointing a firearm, but he saw the victim and Taylor wrestle over Taylor’s weapon. (App. 36). When McCombs was trying to flee from the car, he heard at least two gunshots. (App. 38).

McCombs testified that he pushed the victim from the driver’s seat into the passenger’s seat so that they could go to the hospital. (App. 38). Brown came out to help and rode in the backseat of the car while McCombs drove. (App. 38).<sup>3</sup> McCombs and Brown dropped the victim off at the hospital and then left to alert the victim’s family members. (App. 38-40). He removed the marijuana and a firearm from the victim’s center console while at the victim’s family members’ home, although he testified that the victim had not had the weapon with him during the robbery and shooting. (App. 40-41, 55). He testified that he identified Taylor as the shooter while speaking with a law enforcement officer that night but backtracked on cross-examination to say that he told the officer that he was unable to make an identification because the shooter’s face was covered. McCombs admitted that his testimony on direct that he had told the officer that Taylor was the shooter had been false. (App. 42-45). He explained that he only told the officer that on the night

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<sup>3</sup> McCombs also testified that Brown was the person driving them to the hospital. (App. 38).

of the shooting because the victim's family members had told him not to tell officers what happened because they wanted to make out extra-judicial justice on Taylor. (App. 44, 52, 55, 60). He testified that the officers had to "drag" the information out of him because they do not "tell on people" where he is from. (App. 49). He also denied that he had killed the victim. (App. 49). On re-direct, McCombs testified that he identified Taylor as the shooter when viewing photographs at the law enforcement center that night. (App. 60). He reiterated that "bad" things happen to people who give information to officers and said that he had been assaulted in the county jail just before coming to testify but said that Taylor had not been the one who had assaulted him. (App. 62-64).

Ashley Bohannon, who had had a child with the victim, testified that she had been with the victim on the night of his death. (App. 65). The victim, whose nickname she said was "Mane," dropped her off at her home and left in his red Dodge Avenger after he received a phone call. (App. 67). McCombs and Brown showed up later that night and told her that the victim had been shot. (App. 67). Brown did all the talking because McCombs was quiet and looked as if he had been crying. (App. 67).

Taylor's mother Angelina Williams testified at trial that Taylor had been living with her at the time of the shooting, but that he had not been home on the early morning hours of December 5. (App. 71-72). Taylor only arrived home at about 6:00 a.m. that day and then left again in a blue Mercedes with a man and a woman at about 11:00 a.m. (App. 72-73).<sup>4</sup>

Daishonique Lewis, who was in jail at the time of trial for unrelated and still-pending charges, testified that she used to date Eric Hill, who was Taylor's friend, and that she knew Taylor and knew that his nickname was "A-Lo." (App. 79-82). Lewis received a Facebook message from

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<sup>4</sup> Williams testified outside of the jury's presence that the victim's mother had told her that she knew that Taylor did not kill her son. The plea court ruled that that testimony from Williams was inadmissible as hearsay. (App. 75-77).

Taylor at about 6:00 or 7:00 a.m. on December 5, in which he asked her to come pick him up. (App. 82). Taylor's cousin Alexis Smith was with her at the time. (App. 83). Lewis testified that she dropped Taylor off at her home, picked up her boyfriend from work, and then returned to her home. (App. 83-84). Taylor spent the whole day at her home and told her boyfriend that he had killed someone and needed to hide a gun. (App. 84). She testified that Taylor took a grocery bag from her kitchen and then went outside, after which he said that he had hidden his firearm in the woods and that he had washed his hands with a scrubbing kitchen pad to get rid of any trace of gunpowder. (App. 85-86). Lewis testified that she heard the water running when Taylor was in her kitchen. (App. 86).

On cross-examination, plea counsel elicited testimony from Lewis that she had written letters to an employee at the Solicitor's Office, in which she wrote that she would say anything to get out of jail; that she wanted a plea deal; that she would "flip" Taylor's case "around;" that she would instead help Taylor if the Department of Social Services took her baby from her; that she said that she would do whatever it took and begged for a deal; that she said that she would give the best testimony ever; and that she was happy that Taylor was in jail. (App. 89-98). On re-direct, Lewis testified that she had not yet been charged with anything when Taylor was arrested and that she gave a statement to officers on the night of Taylor's arrest saying that she had heard Taylor confess and that Taylor had hidden the firearm. (App. 104-05). She testified that she wrote the letters because she was upset and did not want to give birth while in jail. (App. 106-07).

Justus Robinson testified that Taylor's nickname was "A-Lo," and that he knew him from the streets. (App. 113-114). Robinson lived in the West View apartment complex and saw the victim in the parking lot in his red Dodge Avenger, with "Little Mane" in the car, too. (App. 114-117, 119). He testified that he knew that the victim dealt in marijuana and that he heard "give it

up” while he had turned his back on the victim to get cash to buy marijuana from the victim.<sup>5</sup> (App. 117). He testified that he ran away without looking back and thought that the victim was trying to rob him when he heard gunshots. (App. 117). He testified that he had not seen Taylor but recognized the voice as Taylor’s. (App. 117, 131, 133). When asked about a previous statement that he had given, he testified that he had seen Taylor walking around the victim’s car—with his face uncovered—just as he had been turning his back on the victim. (App. 118-19, 131). He saw Taylor walk up the driver’s side of the car and stand beside him while he talked with the victim. (App. 135-36). He did not see Taylor shoot anyone and estimated that there had been two to three minutes between his seeing Taylor and hearing the shots. (App. 131, 135). Robinson testified that he ran inside and then watched the victim’s car drive away; he did not tell anyone at the time about what he had witnessed because he feared getting into trouble himself. (App. 120). When officers later arrested him for the victim’s murder, he told them what had really happened and then pleaded guilty to misprision of a felony and is now on probation. (App. 122-126). He admitted under cross-examination that he had originally given false information to officers. (App. 127, 136).

David Paul Garrison, a detective at the Greenville Police Department, responded to the hospital on the night of the shooting. (App. 140). Det. Garrison testified that McCombs told officers initially that the robbers’ faces had been covered, but then identified Taylor as the shooter; the victim’s mother also named Taylor as the shooter. (App. 144-145, 172, 176, 181). McCombs had accurately described Taylor’s physical appearance before Det. Garrison showed Taylor’s photograph to him. (App. 151-52). McCombs identified Taylor as the shooter after Det. Garrison showed Taylor’s photograph to McCombs and had already done so before seeing the photograph. (App. 152, 165). Officers could not locate Taylor at his mother’s home that day, but she gave them

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<sup>5</sup> Robinson drank alcohol and smoked marijuana the night in question. (App. 115, 121).

information about his use of social media that they were able to use to locate him and arrest him at Lewis's home. (App. 155-56, 167, 182-84, 232-34). Officers arrested Robinson based on information given to them by McCombs and Robinson denied that he had been at the scene at the time of the shooting, but Robinson later admitted that he had been there and said that he had seen Taylor shoot the victim. (App. 158-59, 164-65). They charged Brown with misprision to a felony because he had not come forward with information about the crime. (App. 160). Officers were able to locate a firearm behind Lewis's home wrapped up in a grocery bag but were unable to get DNA or prints from it, but they did match the projectiles from the victim's body to the weapon. (App. 161, 166-67, 171, 237, 263). McCombs' fingerprints were found on the exterior of the driver's side of the victim's car, but Taylor's were not. (App. 172, 213-14).

Taylor testified in his own defense at trial. He admitted that he had been present at the apartment complex when the victim was shot. (App. 274). He testified that he saw the victim and McCombs in the car and that McCombs pulled him aside and asked for him to return a firearm that McCombs had previously lent to him. (App. 274-75). He testified that McCombs tried to enlist his help in robbing the victim because McCombs felt that the victim was not looking out for him financially; Taylor testified that he declined McCombs' offer. (App. 275-76). He testified that McCombs put the gun to the victim's head and told him to "give it up," which the victim did not take seriously. (App. 276-77). He testified that he saw the victim and McCombs struggle over the gun and that Robinson shot into the car with his .357 magnum, and that McCombs shot twice, too. (App. 277). He testified that he followed Robinson into Robinson's apartment and that he saw Robinson with the .32 caliber and the .357 magnum weapons. (App. 278). Because Robinson, who he alleged was involved with gangs, threatened him and his mother and told him to get rid of the gun, he went to a friend's home and got a bag for the gun, went to his own home, then went to

Lewis's home, where he ditched the gun outside. (App. 279, 294, 299). He alleged that McCombs and Robinson had ambushed the victim because they thought that the robbery would be easy to carry out. (App. 289-90). He testified that McCombs took the victim to the hospital after the shooting because he had been friends with the victim. (App. 293). He denied that he had told Lewis that he had committed the crimes and explained that he had told her that others were saying that he had killed someone; he also denied that he washed his hands at Lewis's home. (App. 298-99). As noted above, Taylor pled guilty under *Alford* before the jury returned with its verdict. Taylor's statement at sentencing reflected:

That night, nobody intended for none of that to happen. I want to apologize to the family of the victim cause I didn't – I didn't kill nobody, but I understand how the law works.

(App. 363).

## 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, 180, 810 S.E.2d 836, 839 (2018). A reviewing court generally will “defer to a PCR court’s findings of fact and will uphold them if there is evidence in the record to support them.” *Id.* However, the court will “review questions of law de novo, with no deference to trial courts.” *Id.* at 180-81, 810 S.E.2d at 839.

## ARGUMENT

The PCR court erred in finding that Taylor proved that plea counsel was constitutionally ineffective for giving inaccurate advice about Taylor’s parole eligibility because the court found that Taylor satisfied his burden merely because his testimony was not contradicted, which constituted a legal error and improperly shifted the burden to the State.

The PCR court found that Taylor met his burden of proof to establish that plea counsel was constitutionally ineffective. The court’s opinion rested on these findings and conclusions:

- Taylor testified counsel told him he would only have serve 65% of whatever sentence he received for attempted armed robbery, and, had he known that, he would not have pled guilty
- Plea counsel “could not recall” if he advised Taylor that Taylor would have to serve 65% of whatever sentence he received for attempted armed robbery, but “admit[ed] he may have given this erroneous sentencing advice on the potential maximum sentence”
- Because “counsel’s testimony did not contradict” Taylor’s testimony, Taylor’s “testimony that his guilty plea was based on inaccurate sentencing” from his attorney was “convincing”
- Taylor’s uncontroverted testimony was that had he known the attempted armed robbery was an 85% charge, he would not have” pled
- Taylor’s testimony was sufficient to find prejudice under *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991)

(App. 432-433).

The PCR court's order shows several reversible errors. First, the PCR court erred in finding that plea counsel gave incorrect advice to Taylor because the ruling was premised incorrectly on a legal conclusion the court must accept Taylor's testimony as true if "not contradict[ed]" by plea counsel. Second, and factually, plea counsel's testimony did contradict the testimony, and the PCR court failed to address counsel's testimony on that point. Third, the prejudice analysis was truncated to the narrow testimony regarding Taylor's understanding of time he would serve, when the testimony, along with the record as a whole, shows that Taylor cannot meet his burden of showing actual *Strickland* prejudice. These multiple errors in application of the *Strickland* standard warrant reversal.

#### *Strickland Standard*

A post-conviction relief applicant has the burden of proving that the conduct of his lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The test is familiar. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). For a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, he must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Id.* (citations omitted). The "preeminent authority for all"

courts when they are considering an applicant's claim of constitutional ineffectiveness is *Strickland*, which requires that courts be highly deferential to a defense lawyer's performance:

It is all too tempting for a defendant to secondguess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.... 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. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance....

*Butler*, 286 S.C. at 444–45, 334 S.E.2d at 815–16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, if he can meet this showing, the conviction defendant must still “show that the deficient performance prejudiced the defense.” *Strickland*, 466 U.S. at 687. The test is slightly modified for guilty pleas.

The Supreme Court has explained that even in the case of guilty pleas, the first prong still involves review of basic “standard of attorney competence” as found in established precedent. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). However,

The “prejudice,” requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the “prejudice” requirement, the defendant must show that there is a ***reasonable probability*** that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.

*Id.* at 59 (emphasis added). “Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies” rather, “[j]udges should instead look to contemporaneous evidence to substantiate a defendant's expressed

preferences.” *Lee v. United States*, 582 U.S. 357, 369 (2017). The focus is still on the applicant’s “decision-making” but within context of the facts of the case. *Taylor v. State*, 422 S.C. 222, 233, 810 S.E.2d 862, 867 (2018). “Although appellate courts frequently ‘short-hand’ the prejudice prong in a guilty plea ineffective assistance claim as ‘but for the deficient performance is there a reasonable probability that the defendant would not have pleaded guilty but would have insisted on going to trial,’ *Hill* makes clear that this prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594–95 (2009).

#### *Discussion*

The PCR court’s finding that Taylor’s testimony was “convincing” simply because plea counsel did not contradict it was erroneous as a matter of law.<sup>6</sup> The burden was on Taylor to prove that plea counsel’s advice to him “[cannot] be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 686. The burden was on Taylor to prove that plea counsel made such an error that he “was not functioning as the ‘counsel’ guaranteed by the Sixth Amendment.” *Butler*. The burden of overcoming the presumption that plea counsel’s performance was reasonable under prevailing professional norms was “squarely” on Taylor such that the burden could not be overcome merely by “the absence of evidence.” *Dunn v. Reeves*, 594 U.S. 731, 739 (2021) (quoting *Burt v. Titlow*, 571 U.S. 12, 22-23 (2013)). The PCR court relieved Taylor of the burden of proving that plea counsel incorrectly advised him of his parole eligibility, which is a burden imposed on

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<sup>6</sup> As argued in the motion to alter or amend the judgment, and discussed more fully below, the PCR court’s finding that plea counsel’s testimony did not contradict Taylor’s testimony about plea counsel’s advice was an inaccurate assessment of the testimony from the PCR hearing. Plea counsel’s testimony did, contrary to the PCR court’s findings, contradict Taylor’s testimony because, rather than agreeing that he had incorrectly advised Taylor on parole eligibility, plea counsel testified that he did not think that he had ever discussed the topic with Taylor; furthermore, plea counsel was able to explain his testimony on that point by the fact that Taylor had been insistent upon going to trial and their discussions focused on trial preparation.

Taylor by *Strickland*, by finding simply that Taylor satisfied the first prong of *Strickland* because plea counsel's testimony did not contradict Taylor's.

The State does not have to disprove a PCR applicant's testimony, and a defense lawyer's inability to remember certain things about his representation of an applicant does not relieve the applicant of his burden under *Strickland* or the "strong presumption" under *Strickland*. See *Stalk, supra*; *Burt v. Titlow*, 571 U.S. at 23 ("It should go without saying that the absence of evidence cannot overcome the 'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance.'") (quoting *Strickland*, at 689)); *Romine v. Head*, 253 F.3d 1349 (11th Cir. 2001) (stating that when a defense lawyer could not remember his reason for not doing something due to the passage of time, the reviewing federal habeas court should presume that the lawyer did what he should have done and that he exercised reasonable professional judgment). Moreover, the PCR court was not required to accept Taylor's testimony as true, even if his testimony was not contradicted by plea counsel's. See *Black v. Hodge*, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991) ("[M]ust a trier of fact always believe uncontradicted testimony? The answer to the question is, plainly, no. The fact that testimony is not contradicted directly does not render it undisputed. There remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation.") (citing *Terwilliger v. Marion*, 222 S.C. 185, 72 S.E.2d 165 (1952)). By finding that Taylor had met his burden in proving that plea counsel gave him incorrect advice about parole eligibility merely because Taylor's testimony was not contradicted by plea counsel's, the PCR court turned the *Strickland* standard on its head, which is a legal error. But even more, the PCR court erred in his summation of the testimony and shows an absence of factual support, as well.

The State asked plea counsel (who had prepared for and represented Taylor throughout the trial proceedings leading to the deliberations) if “at any point” he advised Taylor “that he’d only have to serve 65 percent of the sentence if he were to be convicted of” attempted armed robbery, counsel testified:

It’s been three and a half years. It’s been a while. I can’t say we never had that discussion, but I can say I don’t remember that discussion, and I don’t believe we had that discussion.

(App. 376, line 23 – 377, line 1). He agreed with PCR counsel on cross-examination that he had no specific recollection about the offense carrying an 85% calculation. (App. 384)

Noticeably absent from counsel’s testimony is factual support for the PCR court’s finding that since counsel “could not recall, that in turn, was counsel “admitting he may have given this erroneous sentencing advice....” (See App. 432). That turns the presumption of reasonable representation on its head, and factually does not address counsel’s own testimony that he did not “believe” he “had that discussion” on percentage to be served. This, too, is error. The PCR court committed further error in presuming prejudice based on only one portion of the evidence.

The PCR court relied on the 1991 case *Alexander v. State* and cabined its consideration to only Taylor’s testimony, going so far as to say his testimony that he would have continued on with his trial but for counsel’s error was “the only evidence in the record on this point....” (App. 433). The PCR court erred both legally and factually in doing so.

Legally, the PCR court failed to consider that since *Alexander*, our courts have expanded and refined the inquiry regarding an applicant’s testimony on this point. In *Stalk* in 2009, our Supreme Court set out, consistent with *Hill*, that the “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” 383 S.C. at 563, 681 S.E.2d at 595. In 2012, in *Goins v. State*,

397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012), the lower court rejected Goins assertion as not credible, and our Supreme Court afforded deference to that decision. Carefully read, *Goins* shows that the lower court conducted a credibility analysis rather than making a presumption. It follows, then, that such testimony could also be rejected as not credible when viewed in context. And, in continuing that trend, in 2013, in *Taylor v. State*, 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013), our Supreme Court instructed: “To satisfy the prejudice prong, Petitioner must prove, *through the presentation of probative and credible evidence*, that he would have gone to trial instead of pleading guilty but for counsel’s deficient advice.” Our Court affirmed the denial of relief finding: “Despite ... assertions to the contrary, there is probative evidence in the Record before us that he would not have chosen to proceed to trial on the Georgetown County charges had counsel told him about the strike.” 404 S.C. at 362, 745 S.E.2d at 103. *See also Lee v. United States, supra* (rejecting a convicted defendant’s mere “*post hoc* assertions ... about how he would have pleaded but for his attorney’s deficiencies”); *Hill v. Lockhart*, 474 U.S. at 60 (observing that Hill had “alleged no special circumstances that might support the conclusion that he placed particular emphasis on his parole eligibility in deciding whether or not to plead guilty.”). Yet, this precedent appears completely overlooked and the necessary analysis in context was not performed. Further, even looking only at *Alexander*, the PCR court erred.

In *Alexander*, our Supreme Court noted that “counsel’s sentencing advice was obviously defective,” and set out that counsel had erroneously told Alexander he could potentially be subject to “one hundred years on the four indictments” when sentencing exposure was much lower. Alexander went to trial (like Taylor here) and only pled when offered a fifteen-year plea opportunity to one charge. Alexander’s testimony concerning he would not have pled was accepted as sufficient, with the Court adding, “We find that because trial counsel’s improper sentencing

advice induced petitioner's guilty plea, this case must be reversed." 303 S.C. at 543, 402 S.E.2d at 486. There is no such error here on the original charges and the sentence maximum such as would induce the plea given the choice of life imprisonment potential or fifteen years. Notably, the Court took a much more global approach to review even though it underscored Alexander's testimony was the only testimony in the PCR hearing on this point. *Id.*, at 543, 402 S.E.2d at 485. In sum, even considering *Alexander*, the PCR read the case much too narrowly and failed to engage in the required context analysis to fairly determine whether the assertion was credible in light of the record. The record when reviewed wholly undermines Taylor's assertion.

Critically, Taylor did not have to guess at how the trial would develop for him, he had a full trial and was at the point of the deliberations. He understood the evidence presented, and how the defense was actually presented. Moreover, the jury deliberated many hours and was ultimately given an *Allen*<sup>7</sup> charge. Then, the pace quickened. The jury continued deliberations after the *Allen* charge around approximately 4:04 pm. (App. 358). Sentencing *concluded* at 4:35. (App. 363). Within those thirty minutes, a deal was considered and offered, the judge conducted a short colloquy, the State argued for twenty-five years, the victim's family spoke, counsel offered mitigation and requested time-served and probation, the defendant spoke (not denying being there but asserting "nobody intended for none of that to happen"). (App. 358-363). That is a lot that happened within the cited time frame and tends to support that Taylor made the decision quickly to take advantage of reduced sentencing exposure, not service of the twenty-year sentence. Taylor's PCR testimony also supports that:

... I was brought back into the courtroom, and my lawyer and the prosecutors approached [the judge] and ... they was deliberating or conversing about my case or the verdict. And I heard the judge say that it beats life and I take the plea – or attempting to plea for involuntary manslaughter and attempted armed robbery.

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<sup>7</sup> *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896).

(App. 370, lines 22 – 371, line 2). Note, the first charge reference in this passage – reduction of murder to manslaughter. Counsel similarly testified at the PCR hearing, while not recalling the specifics as to how the offer was made:

... I can tell you this. [Taylor] jumped on it immediately. He was very enthusiastic about it, more so than me. After a half-day deliberation, I was feeling pretty good. And I remember he was very enthusiastic about pleading to this offer. And, of course, that was his decision not mine.

...

He didn't give [a reason for the enthusiasm]. Things moved really fast. It was offered. He immediately said yes. He went in front of the judge for that ... brief guilty plea colloquy, and that was it.

...

I would say we talked about it for maybe 15 minutes at the most.

...

I don't remember specifically [the conversation] other than what I just told you, and that is that he was very anxious to do it.

(App. 380, line 25 – 381, line 20).

Counsel acknowledged that Taylor indicated they spoke of “maximums,” but counsel did not remember such a conversation. (App. 381). Counsel confirmed that he did discuss the maximum for a murder conviction with Taylor before trial. (App. 382).<sup>8</sup> That Taylor pled to avoid a potential life sentence for non-capital murder is readily apparent. Of no little note, Taylor was aware that the State asked for a *twenty-five year sentence* citing specifically that Taylor, pleading

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<sup>8</sup> Parole eligibility is not the same as a sentence maximum. *See, e.g., Randall v. State*, 356 S.C. 639, 641, 591 S.E.2d 608, 609 (2004) (“This Court has repeatedly acknowledged that normally, parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea.”).

under *Alford* still failed to take responsibility and showed no remorse. (App. 360).<sup>9</sup> Counsel argued that though “[t]here’s a lot of evidence ... he’s [pleading] under *Alford*.” (App. 363). Judge Miller observed: “Yeah, I know. He’s doing it under *Alford*. That’s not accepting responsibility. Five years on the involuntary manslaughter, 20 years on the attempted armed robbery consecutive.” (App. 363, lines 19-22). There is no suggestion either of the sentences exceed the maximum. Taylor received the benefit of the bargain he struck. But again, the PCR court failed to engage in the full consideration of the context of the decision which precedent requires.

Given the error as demonstrated herein, the PCR court’s grant of relief must be reversed.

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<sup>9</sup> The entirety of the brief on the record discussion focuses on this twenty-five year sentence, not a particular sentence for each count, or concurrent or consecutive sentences.

## CONCLUSION

Based on the foregoing, the grant of relief should be reversed.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

P. O. Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

By: 

MELODY J. BROWN

S.C. Bar No. 14244

ATTORNEYS FOR RESPONDENT<sup>10</sup>

September 30, 2024  
Columbia, South Carolina.

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<sup>10</sup> The State was previously represented by Assistant Deputy Attorney General Taylor Zane Smith who authored the petition in this appeal. Present counsel acknowledges that much of Mr. Smith's work is likewise included in this brief.

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SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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*Certiorari to Greenville County*

The Honorable Edward W. Miller, Plea Judge  
The Honorable Eugene C. Griffith, Post-Conviction Relief Judge

Appellate Case No: 2022-001571

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ANGELO HORACE TAYLOR,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

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**CERTIFICATE OF SERVICE**

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The undersigned certifies that as per the March 20, 2020 Order of the Chief Justice, the *Brief of Petitioner* has been forwarded to Appellant's counsel, Kathrine H. Hudgins, Esquire, via email today to [KHudgins@sccid.sc.gov](mailto:KHudgins@sccid.sc.gov), and to her assistant Chris Stock, at [Cstock@sccid.sc.gov](mailto:Cstock@sccid.sc.gov).

This 30th day of September 2024.

*s/Melody J. Brown*

By: \_\_\_\_\_  
MELODY J. BROWN  
ATTORNEY FOR PETITIONER

**From:** [Melody Brown](#)  
**To:** [Kathrine H. Hudgins](#); [Stock, Chris](#)  
**Cc:** [Angela Brown](#); [Brandy Rankin](#)  
**Subject:** Taylor v. State: Appellate Case No. 2022-001571  
**Date:** Monday, September 30, 2024 6:37:00 PM  
**Attachments:** [Taylor, Angelo - Brief of Petitioner.pdf](#)  
[image001.png](#)  
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Dear Ms. Hudgins:

Attached is the Brief of Petitioner and certificate of service that will be filed shortly with the Court of Appeals. Thank you.

Sincerely,

**MELODY J. BROWN, Senior Assistant Deputy Attorney General**

Office of the South Carolina Attorney General

Capital and Collateral Litigation Section | Office 803-734-6305 | [mbrown@scag.gov](mailto:mbrown@scag.gov)

P.O. Box 11549 | Columbia, SC 29211

[scag.gov](http://scag.gov)



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