

STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Jan 15 2025**

**S.C. SUPREME COURT**

CERTIORARI TO LAURENS COUNTY  
Court of Common Pleas  
The Honorable R. Scott Sprouse, Circuit Court Judge

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Appellate Case No. 2024-000807

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Arthur L. Williams,

Petitioner,

v.

State of South Carolina,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## PETITIONER'S STATEMENT OF THE ISSUES PRESENTED

- I. Did the Post Conviction Relief judge err in failing to grant the application of Arthur Williams when trial counsel failed to object to the investigating officer testified that the informant in the case was paid more because he was more reliable?
- II. Did the Post Conviction Relief judge err when he held appellate counsel was not ineffective when he failed to brief the issue as to Officer Matt Veal giving an opinion that a drug transaction was shown on the video when Officer Veal had not been qualified as an expert and jury was as qualified as Officer Veal to say what was shown on the video?
- III. Did the Post Conviction Relief judge err in failing to find that appellate counsel was not ineffective when appellate counsel failed to brief the issues of Officer Shane Prather testifying, in response to a question from the assistant solicitor that Arthur Lee Williams' name had come up on their radar?

## RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES PRESENTED

- I. The PCR court correctly found Trial Counsel was not ineffective for failing to object to Officer Veal's testimony that the informant in this case was paid more than other informants because he was considered more reliable, where Officer Veal did *not* testify that he believed the informant's testimony was credible but properly limited his testimony to the informant's reputation for truthfulness, Trial Counsel testified that he wanted to emphasize the evidence that the informant had been paid by law enforcement, and the PCR court found any prejudicial impact from this statement was negligible compared to the video of the drug transaction.
- II. The PCR court correctly found Appellate Counsel was not ineffective for failing to brief the issue of Officer Veal's description of the video because Appellate Counsel made a valid strategic choice to focus his efforts on attacking the admissibility of the video itself and because the issue of Officer Veal's testimony was not "clearly stronger" than the issue Appellate Counsel chose to present.
- III. The PCR court correctly found Appellate Counsel was not ineffective for failing to brief the issue of Officer Prather's testimony that Petitioner's name had gotten on law enforcement's "radar" because Officer Prather's statement was not hearsay and the issue was not "clearly stronger" than the issue Appellate Counsel chose to present.

## STATEMENT OF THE CASE

On July 10, 2015, Officer Shane Prather of the Clinton County Police Department, with the help of confidential informant Sammy Anderson, executed a controlled purchase of cocaine base at a residence in Laurens County. (App.p.70, line 12–p.75, line 10). Anderson was equipped with a video recording device and was given \$100 to make a purchase of cocaine base from Petitioner. (App.p.75, line 11–p.76, line 13; p.83, lines 6–11). Anderson was dropped off in the vicinity of Petitioner’s address at 11:18 a.m. and was picked up by law enforcement after completing the purchase around 11:25 a.m. (App.p.76, line 14–p.77, line 17). Anderson gave law enforcement the suspected cocaine base, which was later tested by SLED and found to be one gram of cocaine base. (App.p.83, lines 12–23; p.205, line 10–p.206, line 21). Anderson was paid \$50 by law enforcement for assisting in the controlled buy. (App.p.90, lines 8–21; p.197, lines 14–20).

In October 2015, the Laurens County Grand Jury indicted Petitioner for Distribution of Crack Cocaine (2015-GS-30-1488). Petitioner was represented by Ivan Toney, Esquire (“Trial Counsel”). Deputy Solicitor C. Dale Scott and Assistant Solicitor Margaret G. Boykin, of the Eighth Circuit Solicitor’s Office, prosecuted the case.

On May 24, 2018, Petitioner proceeded to trial before the Honorable Donald B. Hocker, circuit court judge, and a jury. Petitioner was found guilty as indicted, and Judge Hocker sentenced Petitioner to twenty-five years’ imprisonment. Petitioner filed a timely notice of appeal.

An appeal was perfected on Petitioner’s behalf by Victor Seeger, Esquire (“Appellate Counsel”), of the South Carolina Commission of Indigent Defense. On appeal Petitioner raised the following issue:

1. The trial judge erred in denying Appellant’s motion to remove or strike the videotape of the drug buy after the State’s main witness, who was the confidential informant in the case, contradicted himself on the stand and showed signs he was incompetent to testify.

On May 27, 2020, the South Carolina Court of Appeals issued an order affirming Petitioner's conviction, finding Petitioner's counsel failed to object to the informant's testimony or the admissibility of the videotape of the drug buy and therefore these issues are not preserved for appellate review. The Remittitur was issued on June 19, 2020.

Petitioner filed an application for post-conviction relief on May 21, 2021. An evidentiary hearing into the matter was convened before the Honorable R. Scott Sprouse, circuit court judge, at the Abbeville County courthouse on December 1, 2022. The PCR court denied and dismissed the application with prejudice by order dated March 28, 2024. Petitioner filed a motion for reconsideration on April 5, 2024, which was denied on April 9, 2024.

Petitioner thereafter filed a timely notice of appeal. By and through counsel C. Rauch Wise, Esquire, Petitioner filed a petition for writ of certiorari on September 12, 2024. This Return follows.

## STANDARD OF REVIEW

The post-conviction relief court's findings of fact receive great deference during appellate review and will be upheld if "any evidence of probative value" exists in the record to support the lower court's findings. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Questions of law are reviewed *de novo*, and appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. *Id.*; *Smalls v. State*, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839 (2018). In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985).

## ARGUMENT

- I. **The PCR court correctly found Trial Counsel was not ineffective for failing to object to Officer Veal's testimony that the informant in this case was paid more than other informants because he was considered more reliable, where Officer Veal did *not* testify that he believed the informant's testimony was credible but properly limited his testimony to the informant's reputation for truthfulness, Trial Counsel testified that he wanted to emphasize the evidence that the informant had been paid by law enforcement, and the PCR court found any prejudicial impact from this statement was negligible compared to the video of the drug transaction.**

Petitioner argues the PCR court erred in finding Trial Counsel was no ineffective for failing to object to a statement by Officer Veal that Anderson was paid more than a typical informant because he was an experienced informant and had established a reputation for reliability. Petitioner claims Officer Veal's testimony constituted improper bolstering. However, Officer

Veal's testimony was not improper. Moreover, the PCR court correctly found Trial Counsel articulated a valid reason for wanting the evidence of Anderson's high payments to come in, as evidence of Anderson's potential bias. In addition, the PCR court found any prejudicial impact this testimony might have had was insignificant compared to the video showing Petitioner selling drugs to Anderson.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). Where, as in this case, a PCR applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*: first, the applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The court, in determining deficiency, must affirmatively

entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003); *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is “a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. “The likelihood of a different result must be substantial, not just conceivable.” *Harrington*, 562 U.S. at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)). The applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814; Rule 71.1(e), SCRPC.

It is improper bolstering for a witness to testify that he or she believes the testimony of another witness. *Briggs v. State*, 421 S.C. 316, 324, 806 S.E.2d 713, 717 (2017) (“[T]he central point of the prohibition against improper bolstering” is that “a witness may not give an opinion for the purpose of conveying to the jury—directly or indirectly—that she believes the victim.”); *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (“[W]itnesses are generally not allowed to testify whether another witness is telling the truth.”). However, the credibility of a

witness may be supported by opinion or reputation evidence of that witness's character for truthfulness, after the witness's character for truthfulness has been attacked. Rule 608(a), SCRE. Where a witness restricts his testimony to his opinion of another's character for truthfulness, after the other person's character has been attacked, and does not testify that he believes a specific statement or account given by that other person, there is no improper bolstering. *See id.; McKerley*, 397 S.C. at 464–65, 725 S.E.2d at 141–42.

At Petitioner's trial, Trial Counsel directed significant effort toward attacking Anderson's character for truthfulness. Trial Counsel elicited from Officer Prather that Anderson was "a known drug addict," that he was "well-known to law enforcement for using drugs all the time," that "the average drug user commits 4500 felonies a year," that drug users are accustomed to hiding their criminal activities, that Officer Prather did not fully trust Anderson, and that deception is part of a confidential informant's job. (App.pp.89–100). Trial Counsel later cross-examined Anderson extensively about his recent head injury,<sup>1</sup> about his memory problems, about his criminal record "going back 20 years," about his addiction to crack cocaine, and about how much he had been paid by law enforcement to act as an informant; he also attempted to show that Anderson was lying about his memory, his ability to read, and his ability to see. (App.pp.121–48). Trial Counsel also cross-examined Officer Veal and elicited from him that Anderson was a drug user. (App.p.192).

Only after Anderson's character for honesty had been extensively attacked by Trial Counsel did Officer Veal, on re-direct examination by the solicitor, testify that Anderson was "a very experienced informant" and that he was paid "more than what we would a normal informant. So that tells you that the reliability of Mr. Anderson, in mine and Sgt. Prather's mind and Capt.

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<sup>1</sup> At the PCR hearing, Trial Counsel testified that Anderson's head injury had been caused by Petitioner's associates attacking him with a hammer before the beginning of trial. (App.p.22).

Goggins’, that he was an established informant. We were able to pay him more money because of his reliability.” (App.p.197, lines 4–20).

Trial Counsel had no ground to object to this testimony. After Trial Counsel’s repeated attacks on Anderson’s trustworthiness, the State was entitled to produce evidence of Officer Veal’s opinion that Anderson was reliable and of Anderson’s reputation as an established informant. This evidence was properly restricted to Anderson’s character for truthfulness, and it did not imply that Officer Veal believed the specific account Anderson gave at trial. Therefore, it did not constitute bolstering. *See* Rule 608(a), SCRE; *McKerley*, 397 S.C. at 464–65, 725 S.E.2d at 141–42.

In addition, the PCR court found Trial Counsel articulated a valid reason for not wanting to object to Officer Veal’s testimony; namely, his trial strategy of casting Anderson as a biased witness due to the amount of money he was being paid by law enforcement. Petitioner complains that this strategy was “not logical,” but pointing out that a witness has a pecuniary connection to the case is an extremely common strategy for attacking the witness’s credibility. “Nothing, we apprehend, tends more strongly to destroy the credibility of a witness than to show that his testimony is or may be influenced by a pecuniary consideration.” *State v. Mulch*, 17 S.D. 321, 96 N.W. 101, 102 (1903). The specific fact that Anderson was paid *more* than normal informants was also important to Trial Counsel’s strategy: “[t]he amount of the compensation for such work might indicate eagerness to show that it was successfully done so as to secure a conviction, or a natural desire for a retention in work highly paid . . . .” *People v. Loris*, 131 A.D. 127, 130, 115 N.Y.S. 236 (App. Div. 1909). The PCR court’s finding that Trial Counsel articulated a valid trial strategy for his conduct is well-supported and should not be disturbed.

Finally, Petitioner claims he was prejudiced because Officer Veal’s statement “could not be deemed harmless beyond a reasonable doubt.” This is not the correct standard for evaluating

prejudice under *Strickland v. Washington*; rather, the standard for prejudice is whether 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.

Petitioner claims he was prejudiced by Officer Veal’s “bolstering” of Anderson because the evidence against him, apart from the testimony of Anderson, was weak. Specifically, he claims the PCR court erred in finding the video evidence outweighed any possible prejudicial impact Officer Veal’s statement may have had. This claim is without merit.

Both Appellate Counsel and Trial Counsel agreed that the video was damning: Trial Counsel testified the video “was as good a video as you’d ever want to see, and it showed Arthur Williams handing over dope to the other guy, I mean, it was a good video” (App.p.21), and “here you had this TV show of what actually happened. There was no question, it was a drug buy on TV, and everybody could see.” (App.p.25). Appellate Counsel testified that he wanted to focus on the admissibility of the video because “If the video gets to the jury, the case is a tough one.” (App.p.33). The video was entered into evidence at the PCR hearing, and the PCR court noted in its order of dismissal that it had “considered [the] video recording that was introduced by the State at Applicant’s trial.” (App.p.330). The PCR court found that the impact of Officer Veal’s statement was so minor, in comparison to the other evidence in the case, including the video of the drug transaction, that Petitioner had failed to prove he was prejudiced by Trial Counsel’s alleged deficiency. There was clearly “evidence of probative value” supporting the PCR court’s finding that the strength of the State’s video evidence negated any chance that the result of Petitioner’s trial would have been different had Trial Counsel objected to Officer Veal’s “bolstering.” *Sellner v. State*, 416 S.C. at 610, 787 S.E.2d at 527.

For these reasons, the decision of the PCR court was not erroneous. The State asks that this Court deny the petition for a writ of certiorari.

**II. The PCR court correctly found Appellate Counsel was not ineffective for failing to brief the issue of Officer Veal’s description of the video because Appellate Counsel made a valid strategic choice to focus his efforts on attacking the admissibility of the video itself and because the issue of Officer Veal’s testimony was not “clearly stronger” than the issue Appellate Counsel chose to present.**

At trial, Trial Counsel cross-examined Officer Veal concerning the drug transaction shown in the video:

Q So you say that [Anderson] laid the crack on the table and then handed it to whoever’s in that video?

A I believe Arthur Lee Williams laid it on the table and [Anderson] picked it up and told him to put it in the bag because he wasn’t going to short . . . the intended . . . purchaser.

Q You can’t see whoever’s in that video hand it to [Anderson] though, can you?

A It was laid on—you know, it got to the table somehow.

Q Okay. So you admit you can’t see whoever handed it to him?

A He did hand him the bag of—of crack cocaine once it was tied up and he handed it to him.

Q So the answer is you do admit that you don’t have any video, anything on there at all, showing him—or whoever—handing drugs to him. You just have video showing drugs going from [Anderson] to Arthur—a rock, correct?

A No, sir. I have—we have video evidence that Arthur Lee Williams handed Sammy Anderson the baggie of crack cocaine.

Q All right. But you have—you have a video of [Anderson] handing a rock to whoever's on that video, correct?

A To put in the bag. Yes.

Q And that was a rock that he brought with him, correct?

A No, it was not. He was searched before the buy. He did not have any narcotics on him.

...

Q The drugs that [Anderson] put on the table and then handed to whoever was on that video, you say that whoever was in that video handed him the drugs first, correct?

A Arthur Lee Williams did.

Q But you also say it wasn't caught on camera.

A It—it got there somehow.

Q Okay.

A I say that during the conversation, that it may be that Mr. Anderson's body was pointed in a different direction and it was—from my understanding of the video, that it was—that was for him, meaning that piece there that [Anderson] picked up was for him to use and that's when Mr. Anderson stated that—that he wasn't going to short him, to put it in the bag. So I took that as—as Arthur Lee Williams handed him the original, small rock and the Mr. Anderson hands it back to him and says put it in the bag.

(App.p.189, line 8–p.190, line 14; p.196, lines 6–22).

On re-direct examination, the solicitor briefly touched on the same issue:

Q Okay. So in your opinion, it was Arthur Lee Williams that put the drugs on the table?

A I—in my opinion, Arthur Lee Williams placed the original rock on the table for [Anderson] ---

Q Okay.

A --- for the business that he was bringing --- (App.p.199, lines 1–6). Trial Counsel objected that Officer Veal was speculating and merely giving his opinion. (App.p.199, line 7–9). The trial court overruled the objection. (App.p.199, lines 10–12).

Petitioner now argues Appellate Counsel was ineffective for failing to brief this issue. The PCR court found Appellate Counsel was not deficient because Appellate Counsel made a valid strategic choice to focus his efforts on attacking the admissibility of the video itself. The PCR court’s finding was correct.

In applying *Strickland* to claims of ineffective assistance of appellate counsel, reviewing courts must accord appellate counsel the “presumption that he decided which issues were most likely to afford relief on appeal. A decision with respect to appeal is entitled to the same presumption that protects sound trial strategy.” *Pruett v. Thompson*, 996 F.2d 1560, 1568 (4th Cir. 1993).

Although appellate counsel is required to provide effective assistance of counsel, “appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing *Jones v. Barnes*, 463 U.S. 745 (1983)). Indeed, “[w]innowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy.” *Smith v. Murray*, 477 U.S. 527, 536 (1986). “For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” *Jones*, 463 U.S. at 754.

“Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” *Smith v. Robbins*, 528 U.S. 259, 288 (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Appellate Counsel raised the following issue on direct appeal:

1. The trial judge erred in denying Appellant’s motion to remove or strike the videotape of the drug buy after the State’s main witness, who was the confidential informant in the case, contradicted himself on the stand and showed signs he was incompetent to testify.

At the evidentiary hearing, Appellate Counsel testified that he chose to focus on the admissibility of the video because he believed the video was the “crux” of the case. The PCR court found Appellate Counsel’s decision to focus on the admissibility issue was a valid strategic choice. The PCR court also found the issue of Officer Veal’s testimony about the content of the video was not “clearly stronger” than the issue Appellate Counsel chose to focus on because Officer Veal was testifying properly under Rule 701, SCRE.

Petitioner now contends the PCR court erred in so finding because Officer Veal should not have been allowed, under Rule 702, SCRE, to give his opinion on what the video depicted because he was not qualified as an expert. However, the PCR court did not rely on Rule 702, but on Rule 701.

Rule 701 provides:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

The PCR court found “Officer Veal was merely describing his opinion, rationally based on his perception of the controlled buy video, which was related to the determination of a fact in issue (namely, whether Applicant distributed drugs to Anderson), and which did not require special knowledge or skill to infer. Essentially, Officer Veal described what he had just watched on the courtroom television monitor.” (App.p.338).

Petitioner now claims Officer Veal was not testifying to his “perception” because he was not physically present at the drug transaction. Petitioner seems to be arguing that seeing a drug transaction recorded on video does not count as a “perception.” Petitioner cites four cases from other states—two of which came out *after* the conclusion of Petitioner’s direct appeal—but does not cite to any binding South Carolina authority for this position. It is difficult to see how an argument that is not supported by any binding authority can be considered “clearly stronger” than the argument Appellate Counsel made.

Petitioner also contends Officer Veal’s testimony was not “helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.” But Officer Veal’s testimony concerned a fact that was put in issue by Petitioner himself: on cross-examination, Trial Counsel had repeatedly attempted to elicit from Officer Veal that a portion of the video showed Anderson giving drugs to Petitioner, rather than Petitioner giving drugs to Anderson. Trial Counsel plainly opened the door to Officer Veal’s testimony on re-direct examination concerning his interpretation of the video. “Where one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though [the] latter evidence would be incompetent or irrelevant had it been offered initially.” *State v. Stroman*, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984) (quoting *State v. Albert*, 303 N.C. 173, 277 S.E.2d 439, 441 (1981)).

For all of these reasons, Petitioner has not shown that the decision of the PCR court was error. Accordingly, this Court should deny the petition for a writ of certiorari.

**III. The PCR court correctly found Appellate Counsel was not ineffective for failing to brief the issue of Officer Prather’s testimony that Petitioner’s name had gotten on law enforcement’s “radar” because Officer Prather’s statement was not hearsay and the issue was not “clearly stronger” than the issue Appellate Counsel chose to present.**

During Petitioner’s trial, the solicitor asked Officer Prather on direct examination whether Petitioner’s name had somehow gotten “on your radar.” Officer Prather replied, “It did.” Trial Counsel objected on the ground of hearsay. The trial court stated, “I don’t think it is offered for the truth of the matter asserted. I think it’s—more goes to toward this officer’s state of mind in— in setting up this controlled buy. So I’ll overrule the objection.” (App.p.74, lines 6–18).

Petitioner argued to the PCR court that Appellate Counsel was ineffective for failing to challenge the trial court’s ruling on this issue. Petitioner contends Officer Prather’s testimony that Petitioner was on law enforcement’s “radar” implied that someone had made an out-of-court statement to law enforcement suggesting that Petitioner had a reputation as a drug dealer.

The PCR court noted that Officer Prather did not specify *how* Petitioner’s name had come to law enforcement’s attention and did not imply that Petitioner was a known drug dealer. To the extent that the testimony implied an out-of-court statement had been made to Officer Prather, the PCR court agreed with the trial court that the challenged statement was not offered for the truth of the matter asserted. Therefore, the PCR court found the issue was not “clearly stronger” than the

issue Appellate Counsel chose to pursue on appeal and was not likely to result in a reversal if it had been briefed on appeal. The PCR court's finding was correct.

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. “It is well settled that a statement that is not offered to prove the truth of the matter asserted should not be excluded as hearsay.” *Hatfield v. Van Epps*, 358 S.C. 185, 192, 594 S.E.2d 526, 530 (Ct. App. 2004). “Testimony is not hearsay where it relates to what the witness did in reliance on, or in response to, a statement.” 31A C.J.S. *Evidence* § 359. “Proof of a statement introduced for the purpose of showing a party relied and acted upon it is not objectionable on the ground of hearsay.” *Webb v. Elrod*, 308 S.C. 445, 449, 418 S.E.2d 559, 562 (Ct. App. 1992). “Inasmuch as the testimony was not offered to prove the truth of the matter stated, but solely to prove . . . a state of mind, the hearsay rule does not apply.” *Player v. Thompson*, 259 S.C. 600, 610, 193 S.E.2d 531, 535 (1972).

In this case, it is clear that Officer's Prather's vague testimony—that, somehow, Petitioner's name had come to the attention of law enforcement—was not offered to prove that Petitioner had a reputation as a drug dealer. Rather, the trial court, Appellate Counsel, and the PCR court correctly determined that Officer Prather's testimony was merely offered to explain his state of mind in deciding to set up the controlled buy. A statement that is offered to show a witness's state of mind, or to show that the witness acted upon the statement, is not hearsay. Appellate Counsel wisely chose to focus his efforts on a different issue.

Petitioner has not shown that the PCR court committed any error as to this issue. Therefore, the petition for a writ of certiorari should be denied.

**CONCLUSION**

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

Respectfully submitted,

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