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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Jasper County
Court of Common Pleas

The Honorable Perry Bucker, Trial Judge
The Honorable J. Derham Cole Sr., PCR Judge

Appellate Case No. 2024-001503

ROHAIME HOPKINS.....Petitioner,

v.

STATE OF SOUTH CAROLINA. .....Respondent.

PETITION FOR WRIT OF CERTIORARI

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Petitioner's Statement of Issues on Certiorari

1. Whether the PCR court erred in finding that trial counsel was not ineffective where on direct appeal the Court of Appeals found Counsel failed to preserve for appellate review the erroneous admission of cell phone records.

2. Whether the PCR court erred in finding that trial counsel was not ineffective where on direct appeal the Court of Appeals found Counsel failed to timely object to Milbrodt's testimony before the cell phone records were admitted and to the trial court's finding that she could testify regarding the cell phone records as a records custodian.

STATEMENT OF THE CASE

Rohaime Hopkins (hereafter "Petitioner") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Jasper County Clerk of Court. During its June 2015 term, the Jasper County Grand Jury indicted Petitioner for murder (2015-GS-27-00144). Petitioner was represented by Scott Lee, Esquire (hereafter "Counsel"). Assistant Solicitors Mary Jones and Brian Hollen, Esquire, from the Fourteenth Circuit Solicitor's Office, represented the State. On May 15-17, 2017, the case proceeded to trial before the Honorable Perry Buckner, circuit court judge. The jury found Petitioner guilty as charged. Judge Buckner sentenced Petitioner to life imprisonment.

Petitioner timely filed a notice of appeal and was represented by Chief Appellate Defender Robert Dudek, who raised the following issues:

1. Whether the court erred in admitting the cell phone and text message evidence (State's exhibits 7-9), since the probative value of that evidence was substantially outweighed by its unduly prejudicial effect under Rule 403, SCRE, the exhibits were not statements against penal interest as the court ruled, and they were confusing to the jury, including the text message, which even if sent by [Petitioner] was ambiguous, and where the court ruled the Verizon Wireless records custodian did not have the expertise necessary to impart the cell tower evidence to the jury?

2. Whether the court erred by not exercising its discretion to exclude Michael Taylor's testimony which claimed that [Petitioner] burned his clothes in a barrel outside Taylor's home on the night of the murder, since Taylor made this claim for the first time on the day of trial, the defense had no notice of this newly claimed devastating evidence prior to that time – which violated fundamental fairness since it was "trial by ambush" – and the court had the inherent authority, and duty, to ensure [Petitioner] received a fair trial?

The Court of appeals affirmed Petitioner conviction by published opinion filed on August 19, 2020. *State v. Hopkins*, 431 S.C. 560, 848 S.E.2d 368 (Ct. App. 2020). The remittitur was issued on September 9, 2020.

Petitioner timely filed a PCR application on September 7, 2021. The evidentiary hearing occurred on May 7, 2024, before the Honorable J. Derham Cole Sr., Circuit Court Judge. Chelsey Marto, Esquire represented Petitioner. Bryan Hall, Esquire of the South Carolina Attorney General's Office represented Respondent.

The Court issued an order of dismissal, denying Petitioner's PCR application and remanding him to the custody of South Carolina Department of Corrections on August 20, 2024. Thus, the request for relief was denied. This appeal follows.

STATEMENT OF FACTS

On November 12, 2014, the decedent was shot and killed in Jasper County. His body was found at the entrance of a red dirt road the next morning by Justin Kesselring, who called 911. (App. 127, 134). Shardaja Singleton also reported that she saw the decedent in the road and called 911. (App. 130-32). She stated that she heard at least six gunshots fire out the night before. (App. 132). The decedent passed away before law enforcement arrived. (App. 144).

Robin Simmons testified that the night of the shooting she was at a family gathering that Petitioner and the decedent attended. (App. 183-84). Simmons testified that Petitioner and decedent left and came back a couple of times and one of the times Petitioner returned to the house he was in all black. (App. 185-86, 189). Simmons admitted that he did not see a gun on Petitioner after he changed clothing. (App. 193).

Antoine Drake testified that he was incarcerated at the time of trial for domestic violence. (App. 228). He stated that he was with the decedent and Petitioner the night before the shooting, looking for drugs. (App. 231). He admitted he had prior cocaine convictions. (App. 231-32). He stated that he saw Petitioner and the decedent again the night of the shooting at the family gathering, at which they left alone without Drake. (App. 234). Drake admitted to using that night, though he claimed he remembered what happened. (App. 238). He stated that he found out what happened to the deceased the following day. (App. 239). On cross-examination, Drake admitted that he had a record of lying to the police, had multiple prior convictions, and was an admitted scammer. (App. 245-57). Drake admitted to an altercation between himself and the decedent shortly before the shooting, though he claimed it was only verbal. (App. 265-66).

Latonya Singleton, “Tutu”, Drake’s girlfriend, stated that the shooting occurred outside her home. (App. 298). She stated that she gets high everyday and did not remember the day of

the shooting. (App. 300). She stated that she did not want to talk to the police and was not present during the shooting. (App. 303). She denied knowing more than what she told the police. (App. 305). She admitted to going to Philadelphia shorting after the shooting, but claimed she goes every November. (App. 306-07). She stated that she had a 9 mm High Point gun, which would have been consistent with the murder weapon that was never found. (App. 308). She denied she had the gun at the time of the murder. (App. 308).

Angel Simmons testified that she was engaged to the decedent when the shooting occurred and that she had multiple criminal convictions on her record at the time for various thefts and bad checks. (App. 320-21). She stated that she was resting the night of the shooting because she and the decedent were up the night before. She stated that after her last conversation with the decedent she heard a scuffle, and the phone hung up. (App. 324). She stated that all calls to the decedent went to voicemail after 9:30 that evening. (App. 324).

Richard Johnson was the SLED agent on the case and participated in multiple interviews involving individuals closely connected to the incident, including Tutu, Drake, and Petitioner. Johnson testified that he concluded that a hit was placed on the decedent for snitching. (App. 338). He stated that the gun was never found, but DNA and fingerprints were. (App. 350). Notably, they found Tutu's fingerprints and ordered a search warrant for her phone, concluding that she provided information that only a participant would know. (App. 353-55).

Johnson talked to Drake, who had an outstanding warrant on him and was on the run. (App. 357-59). Johnson did not arrest him because he wanted information from him instead. (App. 361). Johnson stated that Drake admitted to being on the scene that night, doing cocaine. (App. 371-72). He testified that Drake was arrested for domestic violence and had a 9 mm gun. (App. 373-74). He also testified that he knew of a prior altercation involving a knife between the

decedent and Drake. (App.376-77). Drake told Johnson that he hated Petitioner, wanted him dead, and would kill him himself. (App. 378-79).

Michael Taylor testified that he had a criminal record for theft. (App. 398-99). He stated that he went home and saw Petitioner in his house. (App. 398-99). He stated that Petitioner was in all black and asked for a ride and to change his clothes in the house. (App. 401-04). He stated that he observed Petitioner burning his clothes in his barrel. (App. 404). He stated that he knew of the decedent's and Drake's prior dispute. (App. 406-07).

Byron Singleton testified that he was in jail for murder and was hoping for leniency in exchange for testifying. (App. 435-36). He stated that he met Petitioner at the jail and claimed that Petitioner made a full and open admission of the crime to him while they were both being held pre-trial. (App. 439-443).

Karen Milbrodt worked as a records custodian at Verizon Wireless. (App. 515-17). Defense counsel immediately objected to admission of a text message from Petitioner's old phone number on numerous grounds, including relevance, confrontation clause, hearsay, and because they could not establish who it was sent to. (App. 522-27). The judge overruled the defense's objections. (App. 524-25, 530).

The question became whether Milbrodt had the requisite expertise to give cell tower testimony. She testified that she did recall ever testifying as an expert in cell tower evidence and had talked to engineers about how they operated. She testified that she was unfamiliar with Jasper County cell towers and had never driven by or inspected one. She stated she was unfamiliar with the topography of Jasper County, never drove by or inspected one, and was unaware of the height of the towers or the antennas. (App. 536-545). She stated that she was unfamiliar with a computer program called "MapPoint". (App. 545).

Upon the Court's questioning, Milbrodt confirmed that she had no specialized training in the field beyond job training. (App. 546-47). She also testified that she was in community college at the time, but did not have a degree besides her high school diploma. (App. 546). The Court found that she was not qualified to provide opinion testimony pertaining to cellphone towers but permitted the cell phone records into evidence. (App. 547-48). The text reading "dats done, need to Holla at u" was duly entered into evidence. (App. 550). She testified that every call after 9:30 that night went straight to voicemail. (App. 565).

The pathologist testified that the decedent was shot five times and confirmed the death was by homicide. (573-74). She could not confirm who shot the decedent or when. (App. 574).

STANDARD OF REVIEW

The standard of review for PCR matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Overall, reviewing courts "give[] great deference to the PCR court's findings of fact and conclusions of law", *Dempsey v. State,* 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005), with the petitioner shouldering the burden of proof. Rule 71.1(e), SCRCP; *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). a PCR court's findings will be upheld if there is "any evidence of probative value sufficient to support them." *Id.* Reversal of the lower court's findings occurs when no probative evidence to support the initial findings. *Pierce v. State,* 338 S.C. 139, 526 S.E.2d 222 (2000). Courts must conduct a *de novo* review if evaluating questions of law and are required to reverse the initial holding when the decision is controlled by an error of law. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40; *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR court erred in finding that trial counsel was not ineffective where on direct appeal the Court of Appeals found Counsel failed to preserve for appellate review the erroneous admission of cell phone records.

The PCR court erred in finding that trial counsel was not ineffective where on direct appeal the Court of Appeals found Counsel failed to preserve for appellate review the erroneous admission of cell phone records.

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

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

scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); *see Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel's strategic decisions are to be afforded "'strong presumption' of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel's performance remains deferential towards defense counsel with a presumption that counsel acted competently. *Strickland,* 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the petitioner so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696.

Whether failure to object constitutes deficient performance generally hinges on whether a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992)

(where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel").

Trial counsel was deficient when he failed to properly preserve the issue of whether the Cell Phone Records were erroneously entered for appellate review. Counsel should have extended his objections to the text message, to the cell phone records generally. Specifically, he should have argued that the records would be confusing to the jury, unduly prejudicial under Rule 403, SCRE, and that they were not sufficiently tied to Petitioner. Though Counsel objected to the text message and the separate sector analysis, the Court of Appeals specifically found that Counsel did not specifically object to the Cell Phone Records and that the trial court did not understand the objection to encompass the Cell Phone Records generally. Trial Counsel was clearly responsible for making the proper objections at trial to preserve the important issues that would allow Petitioner to have a meaningful direct appeal. *See Jackson v. Speed*, 326 S.C. 289, 306, 486 S.E.2d 750, 759 (1997) (stating "it is the responsibility of trial counsel to preserve issues for appellate review.").

Petitioner was prejudiced by this deficiency. Beyond the cell phone records, there were only two primary pieces of evidence directly linking Petitioner to the shooting: Antoine Drake and Byron Singleton. Both witnesses had significant credibility issues.

Drake was an admitted scammer, liar, and drug user who was in jail at the time of the crime. He was also someone who had a history of violent altercations with the decedent, admitted to the desire to kill Petitioner, and who's girlfriend had a gun that matched the crime when the murder weapon was not otherwise found. There were also issues throughout the trial of Tutu, Drake's girlfriend, knowing much more about the crime than she let on – something that likely would not have been an issue if such specific details were not relayed by Drake himself.

Byron Singleton's credibility was also extremely questionable, as he was clearly testifying in the hopes of getting a lesser sentence for himself. He had no connection to the crime himself and, instead, relied on a dubious narrative of Petitioner telling him what happened. Singleton was also in jail for murder and had every reason to lie to save himself.

Thus, Petitioner was prejudiced by Counsel's deficiency. Accordingly, the petition for writ of certiorari must be granted.

The PCR court erred in finding that trial counsel was not ineffective where on direct appeal the Court of Appeals found Counsel failed to timely object to Milbrodt's testimony before the cell phone records were admitted and to the trial court's finding that she could testify regarding the cell phone records as a records custodian.

The PCR court erred in finding that trial counsel was not ineffective where on direct appeal the Court of Appeals found Counsel failed to timely object to Milbrodt's testimony before the cell phone records were admitted and to the trial court's finding that she could testify regarding the cell phone records as a records custodian.

Trial counsel was deficient for failing to object to Milbrodt's testimony immediately; specifically, before the cell phone records were admitted into evidence and to the trial court's finding that she could testify regarding the cell phone records as a records custodian. Counsel should have made a Rule 403, SCRE objection, stating that the records are almost incomprehensible, have a high likelihood of confusing the jury, invite speculation, and that whatever probative value they have is substantially outweighed by their prejudicial effect. However, this issue was not preserved on appeal. Trial Counsel was clearly responsible for making the proper objections at trial to preserve the important issues that would allow Petitioner to have a meaningful direct appeal. *See Jackson v. Speed*, 326 S.C. 289, 306, 486 S.E.2d 750,

759 (1997) (stating "it is the responsibility of trial counsel to preserve issues for appellate review.").

Petitioner was prejudiced by Counsel's deficiency. As outlined above, the evidence presented by the State outside of Milbrodt's testimony and admission, through Milbrodt, of the cell phone records was scant and of questionable credibility. Had Counsel timely objected to Milbrodt's testimony before the admission of the records, the outcome at trial would have been different. Accordingly, the petition for writ of certiorari should be granted.

CONCLUSION

For the reasons stated above, a writ of certiorari should be issued to permit full briefing on the issue.

Respectfully submitted,

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April 21, 2025