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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Colleton County
The Honorable William H. Seals, Post-Conviction Relief Judge
The Honorable D. Craig Brown, Trial Judge

Appellate Case No. 2025-000710

SINCERE J. OWENS,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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QUESTION PRESENTED

Petitioner's Question

Did the Court of Appeals err in not finding trial counsel deficient for failing to object to a jury charge on voluntary manslaughter and that the deficiency substantially prejudiced the Petitioner?

Respondent's Counterstatement of Question

Did the Court of Appeals properly find counsel was not deficient for not objecting to the voluntary manslaughter charge when (1) Petitioner's statement that Victim pulled out a gun and told him to run, coupled with evidence of prior difficulties between Petitioner and Victim, supported a finding of sufficient legal provocation; (2) Petitioner's statements that he began running when Victim pulled out a gun and he was not thinking when he began shooting supported a finding of sudden heat of passion; and (3) counsel articulated a valid strategic reason for not objecting?

STATEMENT OF THE CASE

Procedural History

Sincere J. Owens (Petitioner) is presently confined in the South Carolina Department of Corrections serving a cumulative thirty-two-year sentence. In June 2009, the Colleton County Grand Jury indicted Petitioner for murder (2009-GS-15-0305) and possession of a weapon during the commission of a violent crime (2009-GS-15-0306). These charges arose from the fatal shooting of Keith Williams (Victim) on April 22, 2009.

On September 13-15, 2010, Petitioner proceeded to a jury trial before the Honorable D. Craig Brown. Public Defender David S. Matthews represented Petitioner, and Deputy Solicitor Sean P. Thornton prosecuted the case. The jury acquitted Petitioner of murder but convicted him of the lesser-included offense of voluntary manslaughter. The jury also convicted him of the weapon charge. Judge Brown sentenced Petitioner to consecutive terms of twenty-seven years for voluntary manslaughter and five years for the weapon charge. Petitioner filed a motion to reconsider the sentence. A hearing convened on May 29, 2012, before Judge Brown, who later recused himself. On November 13, 2012, a hearing convened before the Honorable Perry M. Buckner, III. Judge Buckner denied the motion.

Petitioner filed a timely notice of appeal, which was perfected by Appellate Defender Kathrine H. Hudgins through the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals dismissed the appeal pursuant to Anders. The remittitur was sent November 21, 2014. See Appellate Case No. 2012-213550.

On June 19, 2015, Petitioner timely filed a PCR application. On April 1, 2019, an evidentiary hearing convened before the Honorable William H. Seals, Jr. On October 18, 2019, Judge Seals issued an order denying Petitioner's application. Petitioner then filed a Motion to Alter

or Amend the Judgement, and a Supplemental Motion to Alter or Amend on January 13, 2020. On March 16, 2020, the PCR court issued an order denying the motion.

Petitioner filed a Petition for Writ of Certiorari in the South Carolina Supreme Court. On November 13, 2020, Respondent filed its return. Thereafter, the matter was transferred to the Court of Appeals. On October 6, 2023, the Court of Appeals issued an order granting certiorari on the question of whether counsel was ineffective for not objecting to the voluntary manslaughter charge and denying certiorari on the remaining questions. Following briefing, the Court of Appeals issued an unpublished opinion on January 23, 2025, affirming the PCR court's order. Petitioner filed a petition for rehearing, which was denied.

Evidence presented at trial

On April 22, 2009, Victim was fatally shot in the upper buttocks. (App. 105). At trial, Shante Glover testified she had children by both Petitioner and Victim. She stated Victim visited her at work on the day of the shooting and was upset that she and Petitioner were together. Shante later called Petitioner and asked him to pick up her children from her grandmother's home, who lived near Victim. (Supp. App. 113-16, 119). On cross-examination, she acknowledged Victim had an "attitude," had been confrontational with her and Petitioner, and had sent a text saying, "he was gonna [F] [Petitioner] up when he saw him." (Supp. App. 122).

Mark McCune, who witnessed the shooting, testified Victim had just arrived home and was checking his mail when Petitioner pulled up. He continued:

> [Petitioner] got out the car. He came and said something about—they must have had confusement or something about his mother or something, and [Victim] was like—[Victim] was like, "What you say? What you say? You know, and after that, you know, all I seen was a gun and he said—
>
> Q. Allright. Who had the gun?

A. [Petitioner].

> . . . And he wasn't trying to shoot him or nothing, you know. He pulls the gun and he was like, "Man, I should—" and then he stopped. He didn't finish his statement. He was like—and [Victim] was like, "Oh, so you got a gun? You got a gun?" and he started walking off and [Petitioner] fired three times at the ground, you know, trying to scare him. And he ran and he must be got hit in the back.

(Supp. App. 94).

Petitioner gave the following written statement, which was introduced at trial:

> I pulled up to my child's grandmother's house to pick up my baby and they told me the kids were still at daycare. So I started walking back to my baby mother's truck when somebody said, "Look." He was walking from his house on Francis Street towards the truck, reaching. **Then, he pulled out a black gun and started**—and told me to run. I was shooting and ran. I didn't know where I was at. I didn't know what he could have did to me. I just ran and shot. [Victim] was the one with the gun.

(Supp. App. 155, emphasis added). Petitioner also provided a video-recorded statement, which was played for the jury. (Supp. App. 157).

Petitioner did not testify or present any witnesses. During closing argument, trial counsel argued Petitioner acted in self-defense. (Supp. App. 216-18). Alternately, he argued, "He didn't intend for anybody to be hurt. If you believe that he went there looking for problems, then he probably—you look at that sudden heat of passion, okay, that's voluntary." (Supp. App. 220). The judge instructed the jury on murder, self-defense, and the lesser-included offense of voluntary manslaughter. (Supp. App. 232-49). The jury acquitted Petitioner of murder but convicted him of voluntary manslaughter.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The Court of Appeals properly found counsel was not deficient for not objecting to the voluntary manslaughter charge when (1) Petitioner's statement that Victim pulled out a gun and told him to run, coupled with evidence of prior difficulties between Petitioner and Victim, supported a finding of sufficient legal provocation; (2) Petitioner's statements that he began running when Victim pulled out a gun and he was not thinking when he began shooting supported a finding of sudden heat of passion; and (3) counsel articulated a valid strategic reason for not objecting.

Petitioner contends the Court of Appeals "vastly expanded the elements or definitions of 'sudden heat of passion' and sufficient legal provocation, almost beyond recognition." (Pet. 5). In support, he cites only to the Court of Appeals' reliance on prior difficulties between Petitioner and Victim, and he contends—contrary to established law—that courts should only consider "what is happening on the scene and at the time of the fatal shot(s)." (Pet. 5). ***Critically, however, Petitioner overlooks additional facts the Court of Appeals relied upon in determining evidence supported voluntary manslaughter, including evidence that Petitioner stated Victim pulled out a gun and told him to run, causing him Petitioner to begin running and fire in response.*** The Court of Appeals' opinion is well-reasoned and supported by the law, and this Court should deny certiorari.

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668 (1984). First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Second, an applicant must prove counsel's deficient performance 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." Id.

"Voluntary manslaughter is the intentional and unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Niles, 412 S.C. 5 1 5, 522, 772 S.E.2d

877 (2015).

1. Petitioner's statement that Victim pulled out a gun and told him to run was sufficient to support legal provocation.

The Court of Appeals properly found evidence supported sufficient legal provocation. In his statement to police, Petitioner indicated Victim "pulled out a black gun" and told him to run. The Court of Appeals properly found this overt act, coupled with evidence that Victim had "attitude," had been confrontational, and had sent threatening text messages to Petitioner, was sufficient to support sufficient legal provocation. See State v. Gardner, 219 S.C. 97, 105, 64 S.E.2d 130, 134 (1951) ("An overt, threatening act or a physical encounter may constitute sufficient legal provocation); State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) (finding trial court properly charged voluntary manslaughter when the defendant "was in a heated argument with Victim" and "testified he was afraid for his life because Victim physically threatened him"); State v. Nichols, 325 S.C. 111, 116, 118, 481 S.E.2d 118, 121-22 (1997) (finding evidence supported voluntary manslaughter when the defendant and the victim had been arguing and the defendant "claimed he saw a shiny object in the victim's hand and he thought it was a gun"); State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (finding trial court erred in not charging voluntary manslaughter when evidence showed Lowry and the victim had been arguing, and Lowry's witnesses testified the victim "moved toward Lowry in a menacing fashion with his arms and hands outstretched toward Lowry as if to grab him"); id. at 399, 434 S.E.2d at 274 ("[W]hen death is caused by the use of a deadly weapon, the opprobrious words must be accompanied by the appearance of an assault—by some overt, threatening act—which could have produced the heat of passion."); Leggette v. State, 440 S.C. 590, 892 S.E.2d 153 (Ct. App. 2023) (finding sufficient evidence existed for voluntary manslaughter when the defendant and the victim's group had longstanding conflict and had been arguing the night of the shooting, and the defendant testified

he was scared when confronted by men in the group and believed the victim was reaching for gun right before the defendant shot victim).

2. Petitioner's statements that "I didn't know where I was at" and "I just ran and shot" when Victim pulled out a gun were sufficient to support sudden heat of passion.

The Court of Appeals properly found evidence supported a finding of sudden heat of passion. According to Petitioner's statement, Petitioner ran and began shooting after he saw Victim with a gun. This was sufficient to support sudden heat of passion. See Walker, 324 S.C. at 260, 478 S.E.2d at 281 ("[S]udden heat of passion, . . . while it need not dethrone reason entirely, or shut out knowledge and volition, it must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence."). Petitioner's statement indicated he lacked control over his actions: "Then he pulled out a black gun and started—and told me to run. I was shooting and ran. **I didn't know where I was at**. I didn't know what he could have did to me. **I just ran and shot**." (App. 155, emphasis added). Based on the foregoing, the Court of Appeals properly found evidence supported a finding that Petitioner acted in a sudden heat of passion.

3. Counsel articulated a valid reason for not objecting to voluntary manslaughter.

The Court of Appeals properly found counsel articulated a valid reason for not objecting to voluntary manslaughter and thus was not deficient. In Leggette, 44 S.C. at 590, 892 S.E.2d at 153, the Court of Appeals addressed the reasonableness of trial counsel's failure to object to a voluntary manslaughter charge in a murder case where the defendant proceeded on self-defense. There, trial counsel expressed concern during the PCR hearing "about the jury's rejection of self-defense." Id. 601 n.5, 892 S.E.2d at 159 n.5. Although counsel was never questioned about whether

he had a strategic reason for not objecting to the voluntary manslaughter charge, the Court of Appeals found his failure to object could have been part of a valid strategy:

> [R]equesting a voluntary manslaughter instruction would have been a legitimate strategic attempt to mitigate the consequences of the sentence Petitioner faced on the murder charge if the jury were to reject his theory of self-defense, as it ultimately did. A murder conviction carries a sentence of thirty years to life (day-for-day) while the sentencing exposure for voluntary manslaughter is two to thirty years computed at 85%. Challenging the voluntary manslaughter instruction at trial would have been a huge risk in light of Petitioner's very contradictory statements to law enforcement and his decision to obtain an illegal firearm and go out that night—armed—despite his escalating beef with Ingram and his anticipation that "something was going to happen."

Id. at 590, 601, 892 S.E.2d at 159 (internal citations omitted).

Here, counsel testified he did not object to the voluntary manslaughter charge because he believed self-defense was not a viable outcome. Specifically, counsel noted Victim was shot in the behind. (App. 95). Based on evidence Victim was shot from behind, counsel's conclusion that self-defense would likely not be a viable defense was reasonable under prevailing professional norms. Further, based on this conclusion, counsel was reasonable in not objecting to the voluntary manslaughter charge. See id. ("Challenging the voluntary manslaughter instruction at trial would have been a huge risk in light of Petitioner's very contradictory statements to law enforcement and his decision to obtain an illegal firearm and go out that night—armed—despite his escalating beef with Ingram and his anticipation that 'something was going to happen.'"). Thus, the Court of Appeals properly found Petitioner did not prove deficiency.

CONCLUSION

For the foregoing reasons, this Court should deny certiorari.

Respectfully submitted,

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This 16th day of May, 2025