

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Jun 30 2025**

**S.C. SUPREME COURT**

On Petition for Writ of Certiorari to  
Beaufort County  
Honorable Deadra L. Jefferson, Trial Judge  
Honorable Roger M. Young, PCR Judge

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Appellate Case No. 2024-001070

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NICK RUSSELL EVANGELISTA,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**RETURN TO PETITION  
FOR A WRIT OF CERTIORARI**

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### **QUESTIONS PRESENTED**

1. Whether the PCR court erred in denying post-conviction relief where counsel's failure to request a jury instruction on voluntary manslaughter was not strategic, and where the evidence supported a verdict of voluntary manslaughter, since Petitioner demonstrated deficiency and prejudice?
2. Whether the PCR court erred in denying post-conviction relief where counsel failed to call Dr. Veronen to testify at the pre-trial immunity hearing, and where the Court of Appeals found the issue of whether the trial court erred in disallowing Dr. Veronen's testimony was unpreserved, since counsel's failure to offer Dr. Veronen's testimony was not reasonable strategy, and since Petitioner was prejudiced?

### **RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS PRESENTED**

1. Did the PCR court properly find counsel was not ineffective for not requesting a voluntary manslaughter charge when (a) trial counsel articulated a valid strategy of focusing on self-defense based on her reasonable assessment that the facts did not support voluntary manslaughter, and (b) a rational view of the evidence does not support that Petitioner killed Victim in a sudden heat of passion?
2. Did The PCR court properly find counsel was not ineffective for not calling Dr. Veronen to testify at the pretrial immunity hearing after the trial court determined Dr. Veronen could not testify to Petitioner's state of mind when (a) this decision was based on a valid strategy of not providing the State a preview of Dr. Veronen's testimony and (b) there is no reasonable probability the judge would have granted immunity had Dr. Veronen testified at the pretrial hearing when the same judge subsequently found—after hearing Dr. Veronen's testimony—that Petitioner was not a battered person?

## STATEMENT OF THE CASE

### *Procedural History*

Petitioner is presently confined in the South Carolina Department of Corrections serving a forty-five-year sentence. In December 2014, the Beaufort County Grand Jury indicted Petitioner for murder (2014-GS-07-01787). This charge arose after Petitioner suffocated his live-in girlfriend Rebecca Melton (Victim) with bubble wrap on August 26, 2014.

Prior to trial, Petitioner moved for immunity under the Protection of Persons and Property Act. Following a hearing, the Honorable Deadra L. Jefferson denied immunity. On December 11-14, 2014, Petitioner proceeded to a jury trial before Judge Jefferson. Public Defender Trasi Campbell represented Petitioner. Assistant Solicitors Hunter Swanson and Mary Coppage Jones prosecuted the case. At trial, Petitioner proceeded on a theory of self-defense based upon battered person syndrome. The jury convicted Petitioner as indicted, and Judge Jefferson sentenced him to forty-five years. Following trial, Petitioner filed a motion for a new trial, a motion to reconsider the sentence, and a motion for parole eligibility pursuant to section 16-25-90 of the South Carolina Code.<sup>1</sup> Petitioner's post-trial motions were denied.

Petitioner filed a timely notice of appeal, which was perfected by Chief Appellate Defender Robert M. Dudek. On appeal, Petitioner argued the trial court erred in (1) excluding Dr. Louis Veronen's expert testimony from the pretrial immunity hearing and (2) excluding evidence of Victim's financial scam, which was relevant to Petitioner's battered person self-defense. The Court of Appeals affirmed issue two on the merits but found issue one was unpreserved. State v. Evangelista, 2022-UP-024 (filed January 12, 2022). The remittitur was sent January 28, 2022.

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<sup>1</sup> This statute allows early parole-eligibility for defendants who "present credible evidence of a history of criminal domestic violence . . . suffered at the hands of the household member."

On March 3, 2022, Petitioner timely filed this application for post-conviction relief (PCR). The State filed a return and a motion or a more definite statement. On November 27, 2023, an evidentiary hearing convened before the Honorable Roger M. Young, Sr. Petitioner was present and represented by Chelsey F. Marto, Esquire. Assistant Attorney General Danielle Dixon represented the State. On June 21, 2024, Judge Young issued an order denying relief and dismissing the application with prejudice.

### *Summary of Facts*

On August 26, 2014, Petitioner suffocated his live-in girlfriend with bubble wrap. He held the bubble wrap to her head for at least three to four minutes, until she died of asphyxiation. Petitioner then left Victim's naked body on the floor of their home and fled in her Jeep Wrangler. Law enforcement apprehended him six weeks later in Florida; at that time, he confessed to killing Victim.

Petitioner proceeded on a theory of self-defense based on battered person syndrome. To support that theory, trial counsel Trasi Campbell hired expert Dr. Lois Veronen, who testified before the jury that Petitioner suffered from battered person syndrome. (App. 511-12). Ultimately the jury convicted Petitioner of murder. Following the hearing, Judge Jefferson—who also had the benefit of hearing Dr. Veronen's testimony at trial—concluded Petitioner was not a battered person pursuant to section 16-25-90 of the South Carolina Code.

## 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, 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. Further, appellate courts “defer to the PCR court's credibility findings as to witnesses who testified before the PCR court.” Thompson v. State, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018). “Where matters of credibility are involved, this Court gives great deference to a judge's findings, because this Court lacks the opportunity to directly observe the witnesses.” Foye v. State, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). 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

**1. The PCR court properly found counsel was not ineffective for not requesting a voluntary manslaughter charge when (a) trial counsel articulated a valid strategy of focusing on self-defense based on her reasonable assessment that the facts did not support voluntary manslaughter, and (b) a rational view of the evidence does not support that Petitioner killed Victim in a sudden heat of passion.**

Petitioner contends the PCR court erred in finding counsel articulated a strategic reason for not requesting voluntary manslaughter. Specifically, he contends the evidence supported voluntary manslaughter, and the PCR court erred in concluding counsel's decision to pursue self-defense was reasonable because this was not an either/or situation. Contrary to this assertion, however, the PCR court's ruling and counsel's assessment were based on a reasonable conclusion that voluntary manslaughter did not fit the facts of this case—not a mistaken belief that counsel had to elect one or the other. Because the evidence did not support a finding that Petitioner acted in a sudden heat of passion, counsel's decision not to pursue this charge and instead focus on self-defense was reasonable under prevailing professional norms. Further, the PCR court correctly concluded that a rational view of the evidence did not support a finding of heat of passion here where the suffocation would have taken a minimum of three to four minutes or longer. Thus, the PCR court correctly concluded Petitioner did not prove prejudice.

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases."

Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show “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.

“To justify charging the lesser crime, the evidence presented must allow a rational inference the defendant was guilty only of the lesser offense.” Leggette v. State, 440 S.C. 590, 602, 892 S.E.2d 153, 160 (Ct. App. 2023).

The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, 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.

State v. Pittman, 373 S.C. 527, 574, 647 S.E.2d 144, 169 (2007). “While the law has not defined a bright-line rule for what constitutes a sufficient time for cooling off, this Court has determined that whether the defendant's actions during the intervening time between the provocation and the killing indicates the absence of sudden heat of passion is an appropriate question for the court.”

State v. Hernandez, 386 S.C. 655, 662, 690 S.E.2d 582, 586 (Ct. App. 2010).

***a. Trial counsel articulated a valid strategy of focusing on self-defense based on her reasonable assessment that the facts did not support voluntary manslaughter.***

At the PCR hearing, trial counsel testified she did not believe this was a case of voluntary manslaughter. She stated the evidence showed Petitioner smothered Victim with bubble wrap before fleeing to Florida, where he was later apprehended. The PCR court correctly found counsel’s assessment that this was not a case of voluntary manslaughter was reasonable under prevailing professional norms.

Even if Petitioner’s testimony about Victim’s actions earlier that evening could constitute sufficient legal provocation, a rational view of the evidence does not indicate Petitioner was acting

under an uncontrollable impulse to do violence when he suffocated Victim. (App. 448, 478). On the evening of the incident, Petitioner admitted he followed Victim out of the bedroom where she woke him up and into a spare bedroom, where he suffocated her. (App. 478). ***Critically, the pathologist testified that suffocating an individual would take three to four minutes or longer.*** (App. 301). Petitioner told police he put bubble wrap on Victim's face because he wanted her to stop breathing. (App. 476). Alternately, he testified he put bubble wrap on her face "because he wanted her to stop talking and stop screaming because [he] didn't want the neighbors to hear." (App. 476). After suffocating Victim, Petitioner did not call 911 or attempt to render aid even though he had medical training. Rather, Petitioner ensured Victim did not have a pulse, packed a suitcase, and absconded to Florida in Victim's Jeep. (App. 472-73, 479, 487). As he fled, he took Victim's phone and threw it into a swamp. (App. 488). The foregoing does not suggest Petitioner "was overcome by a sudden heat of passion as would produce an 'uncontrollable impulse to do violence'"; rather, the act of holding bubble wrap over Victim's face for at least three to four minutes to stop her from breathing or talking and screaming and then leaving her naked, lifeless body on the floor without rendering aid indicates Petitioner was capable of cool reflection. This does not support a rational inference that Petitioner was acting under a sudden heat of passion. See State v. Cole, 338 S.C. 97, 102, 525 S.E.2d 511, 513 (2000) (finding appellant not acting under heat of passion when he had three to five minutes to retrieve a gun before shooting the victim); State v. Pittman, 373 S.C. 527, 576, 647 S.E.2d 144, 169 (2007) ("According to Appellant's confession, the period between the "beating" and the killings lasted more than ten minutes. The methodical execution of the shootings, combined with the lapse of time between the beating and shootings, clearly indicates that Appellant did not kill his grandparents in a sudden heat of passion."); State v. Walker, 324 S.C. 257, 261, 478 S.E.2d 280, 281-82 (1996) (finding evidence

did not support a sudden heat of passion when defendant was capable of cool reflection, demonstrated cool reflection, and attempted to diffuse the tension by walking away).

Counsel's reason for not pursuing voluntary manslaughter and the PCR court's conclusion regarding counsel's reasonableness were based on the reasonable assessment that voluntary manslaughter did not fit the facts of this case—not on a mistaken belief that counsel had to elect one or the other. Assuming *arguendo* the evidence supported voluntary manslaughter—which the State does not concede—it was still reasonable for counsel to elect to pursue the strategy that best fit the facts. Presenting alternate conflicting theories to the jury would have the effect of diluting both defenses to the jury. Although there are situations where evidence can fit alternate theories, it is reasonable for a trial lawyer to assess which theory makes more sense and pursue that theory. See Strickland, 466 U.S. at 689 (“[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, *the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.*” (internal quotation marks omitted) (emphasis added)). Further, although the jury rejected self-defense, this Court cannot engage in a hindsight analysis of counsel's decision-making—especially here where the strategy counsel pursued was supported by the evidence and reasonable under prevailing professional norms. See id. (“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 the evidence better supported self-defense and did not support a finding of a sudden heat of passion, the PCR court properly found counsel's decision to develop a theory of self-defense based on battered person's syndrome was reasonable under professional norms and

not deficient. Likewise, counsel's development and presentation of that defense was reasonable under prevailing professional norms. Thus, the PCR court properly concluded Petitioner did not prove deficiency.

***b. The PCR court properly concluded Petitioner did not demonstrate prejudice because a rational view of the evidence does not support that he killed Victim in a sudden heat of passion.***

In arguing the PCR court erred in concluding Petitioner did not demonstrate prejudice, Petitioner shifts the focus away from what the PCR court actually found. In his argument, Petitioner focuses on his contention that there was not overwhelming evidence of malice. (Pet. 17-18). Although the State contends that holding bubble wrap to a victim's face for three or four minutes (or longer) while her body thrashes uncontrollably constitutes overwhelming evidence of malice<sup>2</sup>, that was not the premise of the PCR court's finding. Rather, the PCR court found that a rational view of the evidence does not support that Petitioner killed Victim in a heat of passion.

The PCR court properly concluded that a rational view of the evidence does not support a finding that Petitioner acted in a sudden head of passion. Here, Petitioner held bubble wrap to Victim's face for three to four minutes or longer because he—by his own statement—wanted her to stop breathing and/or talking and screaming. This is not heat of passion, but rather a deliberate act. After suffocating her, he did not call 911 or attempt to render any aid despite having medical training; rather, he ensured she did not have a pulse before packing a suitcase and fleeing in

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<sup>2</sup> Admittedly, the pathologist here did not testify to how a person's body behaves while being deprived of oxygen. However, this is common testimony by pathologists testifying about suffocation. Here, the pathologist testified it would take a minimum of three to four minutes to kill someone by suffocation. In addition, Petitioner himself acknowledged he did not call 911 or attempt to render any aid to Victim after suffocating her even though he had extensive medical training. Rather, he held his finger to her carotid artery to ensure there was no pulse, packed a suitcase, and absconded to Florida in her Jeep. The foregoing constitutes overwhelming evidence of malice.

Victim's Jeep. (App. 472-73). Based on the foregoing, it is not reasonably probable the trial court would have charged voluntary manslaughter under these facts. See Hernandez, 386 S.C. at 662, 690 S.E.2d at 586 (“[W]hether the defendant's actions during the intervening time between the provocation and the killing indicates the absence of sudden heat of passion is an appropriate question for the court.”). Likewise, the PCR court properly concluded that even if the court had charged voluntary manslaughter, it is not reasonably likely the jury would have found Petitioner guilty of voluntary manslaughter rather than murder. Cf. Hill v. State, 350 SC 465, 567 S.E.2d 847 (2002) (concluding an erroneous ABHAN charge did not prejudice defendant due to overwhelming evidence of ABIK); Jackson v. State, 355 SC 568, 586 S.E.2d 562 (2003) (concluding applicant did not suffer prejudice from counsel's failure to request self-defense charge when overwhelming evidence suggested it was not self-defense); State v. Sams, 410 S.C. 303, 312, 764 S.E.2d 511, 515 (2014) (affirming trial court's refusal to charge involuntary manslaughter in strangulation case; reasoning defendant's “prolonged and continued hold on the victim's neck, until a responding officer repeatedly ordered Sams to release his hold, was intentional and the type of conduct that is highly likely to result in serious injury or death.”). Based on the foregoing, the PCR court properly found Petitioner did not prove prejudice.

**2. The PCR court properly found counsel was not ineffective for not calling Dr. Veronen to testify at the pretrial immunity hearing after the trial court determined Dr. Veronen could not testify to Petitioner's state of mind when (a) this decision was based on a valid strategy of not providing the State a preview of Dr. Veronen's testimony and (b) there is no reasonable probability the judge would have granted immunity had Dr. Veronen testified at the pretrial hearing when the same judge subsequently found—after hearing Dr. Veronen's trial testimony—that Petitioner was not a battered person.**

Petitioner contends the PCR court erred in finding counsel was not ineffective for not calling Dr. Veronen at the pretrial immunity hearing when the Court of Appeals found this issue was unpreserved. He further contends counsel's decision to not present Dr. Veronen pretrial was

not a reasonable strategy, and the PCR court's conclusion that the trial judge would not have granted immunity based on her finding that he was not a battered person conflated two legal theories. Contrary to these assertions, however, counsel articulated a valid reason for not calling Dr. Veronen in that once the trial judge indicated Dr. Veronen could not testify to Petitioner's state of mind, counsel did not want to provide the State a preview of Dr. Veronen's testimony. Further, it is patently incredulous to assert that the same judge who found Petitioner was not a battered person would have somehow granted him pretrial immunity based on a theory that he was acting in self-defense as a battered person. Thus, the PCR court properly considered that finding in determining the likelihood that Dr. Veronen's testimony would have changed the outcome of the pretrial immunity hearing.

***a. Counsel articulated a valid strategy of not providing the State a preview of Dr. Veronen's testimony.***

Initially, it is critical to examine the context of how this issue came about. During the pretrial immunity hearing, counsel was instructed by Judge Jefferson that Dr. Veronen would not be permitted to testify about Petitioner's state of mind at the time of the killing. Judge Jefferson did not prohibit Petitioner from calling Dr. Veronen at the pretrial hearing; she just limited the type of testimony that Dr. Veronen could provide. In light of this, counsel had to make a strategic decision: was it worth calling Dr. Veronen as a witness at the pretrial immunity hearing and providing the State a preview of her testimony when the same judge that would be deciding immunity had limited her testimony? Counsel ultimately determined it was not worth providing the State a preview of that testimony. This was a valid strategy.

At the PCR hearing, trial counsel testified Victim and Petitioner had been in a toxic relationship, and she discussed a Battered Person's Syndrome defense with Petitioner prior to trial and called the premier expert in that field to testify. She also presented police officers who testified

about two incidents where Victim was arrested for domestic violence related to Petitioner (App. 550-51, 556-58) and seven lay witnesses who testified in Petitioner's favor, including his ex-wife. (App. 528, 534, 539, 545, 561, 565, 573). However, trial counsel explained that Judge Jefferson would not allow Dr. Veronen to testify about Petitioner's state of mind at the pretrial immunity hearing.<sup>3</sup> Counsel further averred that had she proffered the testimony pretrial, it would not have made a difference in the outcome of the immunity hearing and would have provided the State an opportunity to preview the expert's testimony and cross-examine the expert prior to trial.

The PCR court properly found counsel articulated a reasonable strategy for not calling Dr. Veronen at the pretrial hearing. Specifically, once Judge Jefferson determined Dr. Veronen could not testify to Petitioner's state of mind, it became necessary for Petitioner himself to testify pretrial.<sup>4</sup> The PCR court properly found counsel's strategic decision to not give the State a preview

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<sup>3</sup> Petitioner incorrectly asserts that evidence does not support the PCR court's finding that Judge Jefferson would not allow Dr. Veronen to testify about Petitioner's state of mind. (Pet. 20). Specifically, trial counsel testified at the PCR hearing that Judge Jefferson would not allow Dr. Veronen to testify about Petitioner's state of mind. Further, the transcript itself contains a discussion of this very issue—wherein Judge Jefferson repeatedly relayed that Dr. Veronen could not testify about Petitioner's state of mind. (App. 44-55). The foregoing constitutes probative evidence to support the PCR court's finding that Judge Jefferson would not allow Dr. Veronen to testify *about Petitioner's state of mind*—forcing counsel to determine whether Dr. Veronen's testimony would thus be beneficial at the pretrial immunity hearing. Petitioner is conflating the Court of Appeals' finding that Judge Jefferson did not determine whether Dr. Veronen could testify with trial counsel's PCR testimony (which is supported by the trial transcript) that Judge Jefferson was not going to allow Dr. Veronen to testify about Petitioner's state of mind.

<sup>4</sup> As set forth above, probative evidence supports the PCR court's finding that Judge Jefferson would not allow Dr. Veronen to testify about Petitioner's state of mind. Petitioner additionally contends that the PCR court erred as a matter of law in finding that once the court concluded Dr. Veronen could not testify about Petitioner's state of mind, it became necessary for Petitioner to testify. (Pet. 20). However, the Court's finding here is not based on a legal error. One of the primary issues at the pretrial hearing was whether Petitioner was acting out of a reasonable fear for his life. Had counsel been able to establish that fear through Dr. Veronen's testimony, she would not have needed to call Petitioner at the pretrial hearing. However, once it became clear that Judge Jefferson would not allow Dr. Veronen to testify about Petitioner's state of mind, there was no other way to establish Petitioner's alleged fear than to have him testify.

of Dr. Veronen’s testimony once the court determined Dr. Veronen could not testify about Petitioner’s state of mind was reasonable under prevailing professional norms and not deficient.

***b. There is no reasonable probability the judge would have granted immunity had Dr. Veronen testified at the pretrial hearing when the same judge subsequently found—after hearing Dr. Veronen’s trial testimony—that Petitioner was not a battered person.***

The PCR court properly concluded it is not reasonably likely Dr. Veronen’s pretrial testimony would have changed the outcome of the immunity hearing—especially when Judge Jefferson subsequently determined (after listening to *all* the trial testimony, including Dr. Veronen’s testimony) that Petitioner did not present credible evidence that he was a victim of criminal domestic violence by Victim. See § 16-25-90 (providing early parole eligibility for defendants who “present credible evidence of a history of criminal domestic violence . . . suffered at the hands of the household member”). In other words, the judge had the opportunity to hear Dr. Veronen’s testimony and ultimately concluded he was not a battered person. Because the judge reached this conclusion after hearing the expert testimony, there is no reasonable probability that had she heard the same testimony pretrial, she would have found Petitioner acted in self-defense.<sup>5</sup> The PCR court thus properly determined Petitioner did not prove prejudice.

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<sup>5</sup> Respondent understands the difference between pretrial immunity based on the Protection of Persons and Property Act and early parole eligibility based on section 16-25-90. However, here where Petitioner’s self-defense hinged on the theory that his fear was reasonable because he was a battered person, it is patently unreasonable to assert that the same judge who found he was NOT a battered person would have somehow granted pretrial immunity had she heard the expert testimony about battered person syndrome before trial.

**CONCLUSION**

Based on the foregoing, this Court should deny the Petition for a Writ of Certiorari.

Respectfully Submitted,

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This 30<sup>th</sup> day of June, 2025.