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**Aug 13 2025**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO DORCHESTER COUNTY  
Honorable Paul M. Burch, Circuit Court Judge

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Appellate Case No. 2024-001756

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TEREK R. GOODWIN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

### **PETITIONER'S STATEMENT OF QUESTION**

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to properly and timely object to jury qualification being held outside Petitioner's presence and where Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability the trial court would have permitted Petitioner to be present during qualification if counsel had timely objected or, in the alternative, the appellate court would have reversed Petitioner's convictions if the trial court denied Petitioner's request to be present since jury qualification is a critical stage of the criminal proceeding and Petitioner had a constitutional right to be present?

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

Whether the PCR court correctly found Petitioner was not prejudiced by trial counsel's untimely objection to Petitioner not being present at jury qualification because Petitioner failed to prove a reasonable probability that the issue would have been successful on appeal since Petitioner does not have a constitutional right to be present at jury qualification, and any error resulting from his absence was harmless since trial counsel received the relevant information from jury qualification including a copy of the criminal records of potential jurors and notes from a colleague who was present at qualification?

## STATEMENT OF THE CASE

In April 2014, the Dorchester County Grand Jury indicted Terek R. Goodwin (“Petitioner”) for burglary – first degree, armed robbery, and kidnapping. On June 10-12, 2019, Petitioner proceeded to a jury trial before the Honorable Perry M. Buckner, III. Assistant Solicitors Michael Spears and George Smythe prosecuted the case. Ashley Chisholm, Esq., and John Kornegay, Esq., (referred to collectively as “trial counsel”) represented Petitioner. The jury convicted Petitioner of burglary – first degree and kidnapping as indicted but convicted Petitioner of strong-arm robbery. Judge Buckner sentenced Petitioner to a concurrent sentence of thirty (30) years for burglary – first degree, thirty (30) years for kidnapping, and fifteen (15) years for strong-arm robbery.

On June 20, 2019, a notice of appeal was filed. On appeal, Tommy A. Thomas, Esq., represented Petitioner and raised the following issue:

[Whether] the circuit court erred as a matter of law when it overruled Applicant’s objection to the fact that jury qualifications occurred outside of the presence of both defendant and defense counsel, as such absence violates Applicant right to due process and a fair trial pursuant to the United States and South Carolina Constitutions, as well as laws and rules propounding this right.

Following briefing and without oral argument, the Court of Appeals affirmed Petitioner’s convictions, finding the issue unpreserved. *State v. Goodwin*, Op. No. 2022-UP-159 (S.C. Ct. App. filed April 6, 2022). The Remittitur was sent on April 29, 2022.

On May 9, 2022, Petitioner filed an application for post-conviction relief (“PCR”). On November 7, 2023, the State (“Respondent”) filed its Return. On February 6, 2024, an evidentiary hearing was convened before the Honorable Paul M. Burch. Assistant Attorney General Bryan T. Hall represented Respondent. Michael H. Lifsey, Esq., represented Petitioner. In his PCR application, Petitioner alleged ineffective assistance of counsel for failing to timely object to the manner in which jury qualification occurred and other issues. On October 15, 2024, Judge Burch

denied Petitioner's application, determining Petitioner failed to prove prejudice because jury qualification is not a critical stage requiring a criminal defendant's presence and trial counsel received the necessary information needed. This Petition follows.

## STATEMENT OF THE FACTS

Monica Sauls and Kevin Sauls (“Victims”) received a \$20,000 insurance settlement, and Mr. Sauls showed the money to some coworkers. (App. 155-56; 167). The following week, Mrs. Sauls awoke to three (3) men armed with guns in her home. (App. 157). The men tied Mrs. Sauls up and demanded money. (App. 157). Mrs. Sauls told the men where the money was and managed to escape and get help after the men left. (App. 157). Pursuant to a search warrant, police obtained phone records from one of Mr. Sauls’ coworkers and found text messages between the coworker and Petitioner containing details that only the person that committed the crime would have known. (App. 257). Petitioner was arrested at a hotel and charged. (App. 197-98; 211-12).

Pre-trial, the trial judge heard motions with the solicitors, Petitioner, and trial counsels present. (App. 105-09). Simultaneously, the Honorable Maite Murphy conducted jury qualification in a separate courtroom with a court reporter present.<sup>1</sup> (App. 108). In chambers, the trial judge informed counsel for both the State and Petitioner that Judge Murphy would qualify the jury while pretrial motions were being heard. (App. 107-08). Neither the State nor Petitioner objected in chambers at that time. (App. 107-08). After the jury was selected, Petitioner’s trial counsel objected to not being present at jury qualification. (App. 105-06). The trial judge found the objection untimely. (App. 108).

The trial judge also stated that a member of the public defender’s office was present during jury qualification and shared information with trial counsel. (App. 108:18-21). The trial judge further stated that the court gave trial counsel access to the solicitor’s records that trial counsel would have had for jury selection, including the criminal records of the prospective jurors. (App.

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<sup>1</sup> Respondent exercised due diligence in attempting to obtain a copy of the transcript from jury qualification but was unsuccessful. To the knowledge of Counsel for the State, a transcript is unavailable.

108:21-23). The trial judge found Petitioner was not prejudiced by not being present. (App. 108-09).

At the PCR hearing, Ashley Chisholm (“Chisholm”) testified that the usual practice in Dorchester County for conducting jury qualification is that the jury is brought in and roll-call is done downstairs [at the courthouse], where typically the attorneys are not present for roll-call. (App. 478). Afterwards, the jury is brought up. (App. 478). Chisholm testified that a public defender in his office informed him during pretrial motions that the jury was being qualified. (App. 479). Chisholm testified that there was confusion on behalf of himself, Kornegay, and the solicitors. (App. 479). Chisholm testified that he has only practiced in the First Circuit and has never seen a public defender or private attorney not be present for jury qualification, but other counties could be different. (App. 479). Chisholm testified that the defendant is usually present. (App. 482). Chisholm testified that the trial judge gave trial counsel a clean copy of the criminal records of potential jurors. (498:7-13).

John Kornegay (“Kornegay”) testified that the attorneys are usually present for jury qualification in Dorchester County. (App. 507). Kornegay testified that during jury qualification, the judge asks the jurors standard questions that are based on statute. (App. 507). Kornegay testified that someone from the public defender’s office was present at jury qualification, took notes, and those notes were provided to trial counsel. (App. 510:17-511:1).

## STANDARD OF REVIEW

Appellate courts give great deference to the PCR court's factual findings and will uphold them if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts will review the PCR court's conclusions of law *de novo* and will reverse if the PCR court's decisions are controlled by an error of law. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms (i.e. deficient performance), and (2) the applicant sustained prejudice as a result 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). To establish prejudice, the applicant must prove “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 (quoting *Strickland*, 466 U.S. at 694).

Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. When evaluating a claim for ineffective assistance of counsel, the court is to examine counsel's conduct by the law available at the time of trial and “every effort be made to eliminate the distorting effects of hindsight.” *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (quoting *Strickland*, 466 U.S. at 689).

## ARGUMENT

**The PCR Court correctly found Petitioner failed to prove he was prejudiced by trial counsel’s untimely objection to him not being present at jury qualification because Petitioner failed to prove a reasonable probability that the issue would have been successful on appeal if preserved.**

The PCR Court correctly found Petitioner failed to prove he was prejudiced by trial counsel’s untimely objection to his absence at jury qualification. To establish a claim of ineffective assistance of counsel for failing to object and preserve an issue, the applicant must prove both deficiency and prejudice. *Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018). This Court need not determine whether counsel’s performance was deficient before examining whether prejudice was suffered. *Strickland*, 466 U.S. at 670 (stating “A court need not first determine whether counsel's performance was deficient before examining the prejudice... If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed”).

The proper inquiry for prejudice for failing to object and preserve an issue is whether there is a reasonable probability that the issue would have been successful on appeal. *See Millidge*, 422 S.C. at 380, 811 S.E.2d at 804 (stating the inquiry for prejudice is whether there is evidence in the record such that “an appellate record would necessarily have affirmed the trial courts’ ruling”); *see also Gibbs v. State*, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013) (finding no prejudice for counsel’s failure to object because “a contemporaneous objection by trial counsel would not have changed the outcome of Petitioner’s case on appeal”).

**A. Petitioner does not have a constitutional right to be present at jury qualification because it is an administrative function of the trial court, not a critical stage in the criminal proceeding under the Sixth Amendment.**

Petitioner failed to prove a reasonable probability the unpreserved issue would have been success on appeal because Petitioner does not have a Sixth Amendment right to be present at jury

qualification. The Sixth Amendment guarantees a criminal defendant the right to a public trial with a jury. U.S. Const. amend. VI. Under the Sixth Amendment, a defendant has the right to be present at any stage of the criminal proceeding that is *critical* to its outcome *if his presence would contribute to the fairness of the procedure*. *State v. Shuler*, 344 S.C. 604, 624, 545 S.E.2d 805, 815 (2001) (emphasis added). A defendant’s right to be present is limited to critical stages “whenever his presence has a relation, reasonably substantial, to the fulness of his opportunity to defend against the charge[s].” *Kentucky v. Stincer*, 482 U.S. 730 (1987). “[D]ue process clearly requires that a defendant be allowed to be present ‘to the extent that a fair and just hearing would be thwarted by his absence[.]’” *Id.* (citing *Snyder v. Massachusetts*, 291 U.S. 97, 105-06 (1934))). The defendant’s right to be present is not guaranteed “when [his] presence would be useless, or the benefit but a shadow[.]” *Id.*

In South Carolina, the procedure for jury qualification is codified in statute as follows:

The presiding judge shall at each term of court ascertain the qualification of the jurors.

The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law. The clerk of court shall maintain a list of all jurors excused or disqualified and the reasons provided thereof by the presiding judge [...]

S.C. Code Ann. § 14-7-1010 (Supp. 2020).

South Carolina has several statutory automatic disqualifiers for jury service such as illiteracy, felony conviction, mental or physical infirmities, having less than a sixth-grade education, being a county officer, or being a member of the grand jury that found an indictment. *Id.* §§ 14-7-810 to -830. The statute allows the trial court, within its discretion, to excuse a potential juror upon a finding of good and sufficient cause. *Id.* § 14-7-860; *State v. Rogers*, 263 S.C. 273,

210 S.E.2d 604 (1974). The statute also provides an exemption to jury service for persons who are aged sixty (65) years of age or older. *Id.* § 14-7-840.

Jury qualification is an administrative function of the trial court, where Petitioner's presence was not substantially related to his opportunity to defend against the charges. Additionally, the jury qualification proceeding would not be thwarted by Petitioner's absence. During jury qualification, the trial judge asks questions to the jury pool, based on statutorily defined criteria, to determine whether a potential juror is qualified by law to serve on a jury. The trial judge is the sole determiner of whether a potential juror is statutorily qualified to serve on a jury. *Rogers*, at 381, 210 S.E.2d at 608 ("excusing jurors is addressed to the sound discretion of the trial judge, the exercise of which will not be interfered with unless it is clearly shown to have been abused to the actual prejudice of the complaining party"). A potential juror's qualification to serve on a jury is not limited to the particular case for which a criminal defendant is being tried. Typically, after a judge qualifies the pool of potential jurors, the qualified jury panel can be used in either the civil or criminal trials scheduled during the court term. The qualified jury panel is not limited to the specific case being tried.

The attorneys for both the State and the defendant have little to no involvement with jury qualification process. At this stage, the attorneys neither ask questions of the potential jurors nor interact with them. At the PCR hearing, Petitioner's counsel, Chisholm, testified that during jury qualification, he cannot recall attorneys having an input when the judge is questioning jurors as required by the statute. (App. 495:14-18). Likewise, Petitioner's counsel, Kornegay, testified that during jury qualification, he is unaware of a basis for attorneys to object to the trial judge asking standard questions based on the statute. (App. 507:2-10). Because of this, a criminal defendant's presence at jury qualification is "useless" and the benefit of his presence is "but a shadow."

Contrast the jury qualification process with that of *voire dire* and jury selection. During *voire dire*, the trial judge questions the jurors using questions submitted to the court by the parties. The questions asked are relevant to and based on considerations of the issues in the case being tried. During the *voire dire*, the attorneys are given the opportunity to closely observe the potential jurors, analyze their demeanor in response to relevant questions, and ascertain the biases and impartiality of the potential jurors.

During jury selection stage, the attorneys and defendants play an active role in deciding whether to sit a potential juror on the jury or strike them. In both *voire dire* and jury selection, the attorneys and the defendant play an active role in accessing the potential jurors and composing a jury that will try the specific case. Accordingly, *voire dire* and jury selection are critical stages of a criminal proceeding under the Sixth Amendment since both stages substantially relate to the defendant's opportunity to defend against the charges and opportunity to select a competent and impartial jury. However, such involvement by the attorneys or a defendant does not occur at the jury qualification stage since the trial judge solely ascertains a juror's qualification based on statutorily defined criteria.

This distinction is also recognized by other states. In *Remeta*, the Florida Supreme Court stated the following:

It is important to understand the distinction between the general qualification of the jury by the court and the qualification of the jury to try a specific case.... The general qualification process is often conducted by one judge, who will qualify a panel for use by... [other judges] in multiple trials. Counsel or a defendant does not ordinarily participate in this type of qualification process.

*Remeta v. State*, 522 So.2d 825, 828 (1988) (holding the trial court was not required to obtain an express waiver from the defendant for his absence during jury qualification).

In Petitioner's case, the PCR court also noted the typical practice of jury qualification in South Carolina, stating:

In 33 years, I've never heard this point argued for a defendant to be present [at jury qualification].

...  
I would certainly say that that's not a critical phase [stage] in the process where a defendant would need to be present. A lot of these courthouses, you have one judge to go in there and qualify the jury – have the roll call, qualify the jury for possibly two or three common pleas terms as well as general sessions terms.

(App. 484:3-15).

Although trial counsel testified that it was the usual practice in Dorchester County to have defense counsel and the criminal defendants present for jury qualification, that is not the standard practice in other parts of the State. While trial counsel testified at the PCR hearing that they would have liked to be present at jury qualification to observe the jurors and their demeanor and body language, jury qualification is typically not the time that such observations are made. The PCR Court acknowledged this as well, stating:

Let's get the actual qualification questions by the judge. Very, very few jurors, when they are qualified and meet the requirements of each question, will ever stand up or make any comment for you, as an attorney, to get any observation from.

(App. 487:23-488:2).

By contrast, *voire dire* and jury selection are the appropriate stages for the attorneys to observe the jurors, their demeanor, and their body language in response to questioning by the judge on issues relevant to the particular case being tried. In Petitioner's case, trial counsel was present at *voire dire* and jury selection and thus, was given the opportunity to observe and select potential jurors. (App. 480-81; 71-105). Although trial counsel did not discuss with Petitioner whether he has a right to be present at jury qualification, Petitioner does not have that right under the Sixth

Amendment. (App. 483). Additionally, since he does not have the constitutional right to be present at jury qualification, Petitioner failed to prove a reasonable probability that if trial counsel had timely objected, the issue would have been successful on appeal.<sup>2</sup>

**B. Petitioner failed to prove prejudice from trial counsel's untimely objection because any error resulting from Petitioner's absence was harmless since trial counsel received all relevant information including criminal records of potential jurors and notes from a colleague who was present at jury qualification.**

Petitioner failed to prove a reasonable probability that the result of the appeal would have been different since trial counsel received relevant information relating to jury qualification. Even if the issue were preserved for appeal, there is sufficient evidence in the record for the appellate courts to find that Petitioner was not prejudiced from his absence under a harmless error analysis. "Denials of a defendant's right to be present, as well as other constitutional violations, are subject to a harmless error analysis." *State v. Shuler*, 344 S.C. 604, 626, 545 S.E.2d 805, 816 (2001). "A defendant's exclusion, or absence, will be reviewed in light of the whole record." *Id.* at 624, 545 S.E.2d at 815.

In light of the whole record, Petitioner failed to prove he was prejudiced by being absent from jury qualification under a harmless error analysis. The trial judge gave trial counsel access to the solicitor's records that trial counsel would have had for jury selection, including the criminal records of the potential jurors. (App. 108:21-23). At the PCR hearing, trial counsel testified that the trial judge gave trial counsel a clean copy of the criminal records of potential jurors. (498:7-13). Additionally, a colleague of trial counsel from the public defender's office was present at jury

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<sup>2</sup> As acknowledged by the PCR court, should our appellate courts find otherwise and determine a criminal defendant has a right to be present at jury qualifications, it would create and pose serious issues to judicial security, economy, and efficiency. (App. 468:22-469:6; 484:1-7). In larger counties, where several defendants might be tried in a week, and where civil trials might also be occurring, it would be impractical to have enough courthouse space and security personnel to accommodate an entire jury pool of potentially hundreds of people, each criminal defendant, and their attorney(s). Counties would have to drastically alter their budgets and security protocol to facilitate such a change.

qualification and took notes. (App. 108:18-21). Those notes were given to trial counsel. (App. 517-18, PCR St.'s Ex. 1).

Petitioner argues that the notes received from trial counsel's colleague did not list any of the potential jurors' occupations, spouses, or spouses' occupations. However, that information is typically kept by the clerk of court's office, and trial counsel could have obtained it from the clerk. (App. 494:4-5). The PCR court also acknowledged this, stating:

You are just as aware as I am of the jury return that has basically the same information in those simple questions that the clerk of court and the judge will ask on roll call and the initial qualification. Name, occupation, what the spouse does, how many meal [sic] – how many miles they traveled to be there, basic information there.

(App. 486:11-16).

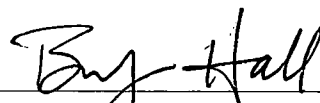
The trial court found Petitioner was not prejudiced by his absence because he received all the relevant information. (App. 108:18-109:1). After reviewing the trial record and testimony, the PCR court also found that Petitioner was not prejudiced by being absent from jury qualification. (App. 525-31).

Trial counsel and Petitioner were present at and participated in *voire dire* and jury selection, where they had the opportunity to closely observe and examine the potential jurors and make selections and strikes. Additionally, since the solicitors were also absent from jury qualification, Petitioner cannot show that the prosecution gained some additional information or insight that was not provided to the defense. (App. 105-06; 493:9-10) Thus, there is sufficient evidence in the record to support a finding that Petitioner and trial counsel's absences from jury qualification was merely a harmless error. Therefore, Petitioner failed to prove there's a reasonable probability that but for trial counsel's untimely objection, the result of his appeal would have been different.

**CONCLUSION**

Based on the foregoing argument, the PCR court correctly found Petitioner failed to meet his burden. Accordingly, the State respectfully requests this court to affirm the PCR court's rulings and deny Petitioner's writ for certiorari.

Respectfully submitted,



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