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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Grace Gilchrist Knie, Circuit Court Judge

TERRY LEMORE MCCARRELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000415

PETITION FOR WRIT OF CERTIORARI PURSUANT TO AUSTIN V. STATE

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ISSUE PRESENTED

Whether the PCR court erred holding trial counsel was not ineffective for failing to move to sever petitioner's criminal sexual conduct charge and lewd act charge from a charge of grand larceny?

STATEMENT

On February 19, 2013, a Greenville County grand jury indicted petitioner for criminal sexual conduct with a minor, second degree and lewd act. App. 570—571; 573—574. On June 24, 2014, a Greenville County grand jury indicted petitioner for contributing to the delinquency of a minor and grand larceny. App. 576—577; 579—580. On July 7, 2014, petitioner was tried in his absence before the Honorable Robin Stillwell and a jury. App. 1—314. Alex Stalvey represented petitioner. Assistant solicitors, Lisa Bentley and Andrew Culbreath, prosecuted for the state. App. 1.

The jury found petitioner guilty as indicted. App. 305, l. 14—306, l. 2. On July 10, 2014, Judge Stillwell published petitioner's sentence. Petitioner was sentenced to concurrent terms of three years' imprisonment for contributing to the delinquency of a minor, five years' imprisonment for grand larceny, fifteen years' imprisonment for lewd act, and twenty years' imprisonment for criminal sexual conduct (CSC) with a minor, second degree. App. 312, ll. 11-19.

An *Anders*[1] brief was filed on petitioner's behalf and the Court of Appeals dismissed his appeal after review. Thereafter, petitioner filed an application for post-conviction relief (PCR). App. 315—321. On February 23, 2017, an evidentiary hearing was held before the Honorable Brooks P. Goldsmith. App. 330—428. William Yarborough represented petitioner, and Julie Coleman represented the state. App. 330.

On April 20, 2017, Judge Goldsmith signed an order denying PCR. App. 485—495. The PCR court found trial counsel's purported defense strategy, attacking the credibility of the minor by suggesting the minor fabricated the story about her sexual relationship with petitioner to

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1 *Anders v. California*, 378 U.S. 738 (1967).

escape punishment for stealing, was valid. Thus, the court found counsel was not deficient for failing to move to sever charges and that regardless no prejudice was shown. App. 491—492.

PCR counsel, Mr. Yarborough, appealed the denial of PCR. App. 496—515. On April 10, 2019, The South Carolina Court of Appeals granted certiorari to address whether petitioner's argument that the PCR court erred in finding counsel was not ineffective for failure to sever the charges and that the PCR court erred in concluding that trial counsel had articulated an objectively reasonable strategic reason for failing to move for a severance. App. 497; 531. On July17, 2019, the Court wrote to PCR counsel, Mr. Yarborough, and requested counsel serve and file the brief of petitioner and additional copies of the appendices within ten days. App. 532. On August 7, 2019, the Court dismissed the appeal because counsel for petitioner failed to file the brief of petitioner and additional copies of the appendices. App. 533.

Petitioner filed a second application for PCR in 2021, requesting belated review of his first denial of PCR. App. 535—541. On September 21, 2023, an evidentiary hearing was held before the Honorable Grace G. Knie. App. 554—565. Susannah Ross represented petitioner and Melody Brown appeared for the state. App. 554. At the conclusion of the hearing the PCR court granted petitioner's request for belated appeal of the denial of his PCR. App. 563, ll. 16-21.

On October 12, 2023, Judge Knie signed an order granting belated PCR review pursuant to *Austin v. State*, 305 S.C. 348, 409 S.E.2d 395 (1991). App. 566—569. Judge Knie found petitioner did not waive his right to appellate review and was entitled to a belated review of the denial of his PCR. App. 566—569.

Petitioner now files this petition for writ of certiorari pursuant to *Austin*, regarding Judge

Goldsmith's 2017 denial of petitioner's application for PCR.[2]

2 Pursuant to *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992), petitioner files this petition for writ of certiorari addressing the question from the previous post-conviction relief order that petitioner seeks to have reviewed. As required, petitioner is filing a separate petition raising the issue of whether the PCR judge correctly held that petitioner had not knowingly and intelligently waived his right to appellate review of the previous PCR order.

ARGUMENT

The lower court erred denying PCR and finding trial counsel was not ineffective for failing to move to sever petitioner's criminal sexual conduct charge and lewd act charge from a charge of grand larceny.

Introductory facts

In November 2011, Tamila and Jesse Woodard alleged petitioner took jewelry from their home while he and their neighbor, K.C.O., were visiting their home. App. 73—76; 85—90. During their investigation law enforcement found text messages on petitioner's daughter's cellular phone that led them to believe there was a sexual relationship between petitioner and K.C.O. App. 124, ll. 4-20. All four charges were tried together. App. 349, l. 19—350, l. 9.

Evidentiary Hearing

During petitioner's evidentiary hearing trial counsel, Alex Stalvey, testified he was appointed as petitioner's attorney sometime in June 2014. He recalled one meeting with petitioner prior to his July 2014, trial. App. 334, l. 17—335, l. 22. Trial counsel never spoke to petitioner's former defense counsel, nor did he ask for a continuance in petitioner's case although he was appointed only weeks prior the start trial. App. 336, l. 8—337, l. 9.

Trial counsel acknowledged he failed to move to sever the grand larceny charge from petitioner's CSC with a minor and lewd act charges. Counsel testified, because K.C.O. was involved in the grand larceny incident, trying the cases together was part of his defense strategy. He said, "the only reason [] [K.C.O.] made up these allegations was to try to save herself or give herself some excuse to get out of the grand larceny charge." App. 338, ll. 8-22. Later in his testimony trial counsel admitted, "if we could have severed it and kept the jury from hearing that my client was . . . a suspect in a grand larceny case, then that would have been a better way to

go. As far as trial strategy." App. 369, l. 25—370, l. 4.

Discussion

Multiple charges can be tried together when they have a logical relationship to each other and when there is no prejudice. The "test" is that the charges must "(1) arise out of a single chain of circumstances, (2) [be] proved by the same evidence, [and] (3) [be] of the same general nature ...." *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). Further, no real right of the defendant can be prejudiced. *Id.* "Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial [court] has the power, in [its] discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced." *State v. Rice*, 368 S.C. 610, 614, 629 S.E.2d 393, 395 (Ct. App. 2006).

The PCR court erred finding trial counsel was not ineffective where he failed to move to sever the CSC with a minor and lewd act charges from the grand larceny and contributing to the delinquency of a minor charges. Counsel was deficient in failing to move to sever the charges in petitioner's case. The nature of the charges including the elements the state needed to prove at trial were, and are, completely different. Grand larceny does not share any element of evidence in common with either the CSC with minor or lewd act charges. Additionally, the evidence at trial did not show that the CSC or lewd act charges occurred as part of the same transaction as the grand larceny charge or that the motive in committing one offense was in furtherance of the other. The only link between the charges is K.C.O. and petitioner's alleged involvement in both which serves to make their joinder more prejudicial.

At trial the evidence regarding the CSC and lewd act charges came in through K.C.O.'s testimony and evidence of potentially incriminating texts found on petitioner's daughter's

cellular phone. While K.C.O. also testified regarding the events of the night the alleged theft took place, the instance was not linked to any instance of inappropriate contact between petitioner and K.C.O. The evidence of these distinct crimes was entirely separate and as such should have been tried separately.

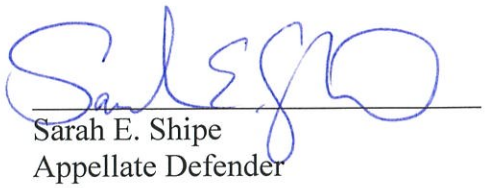
"[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Watson v. State*, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006). Counsel's strategy will be reviewed under "an objective standard of reasonableness." *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002).

Trial counsel's decision not to move to sever the charges was not reasonable and does not excuse his deficiency. Counsel testified his defense strategy was to attack K.C.O.'s credibility, and he claims he would not have been able to do that without trying all the charges together. However, the details of K.C.O.'s prior criminal history came out during her direct not during defense counsel's cross-examination. App. 143—148. Had grand larceny and contributing to the delinquency of a minor been charged separately, the jury would not have known of any alleged improper relationship and could have concluded that K.C.O. was more than just an innocent bystander in this theft based on her prior criminal history. Instead, the jury heard shocking evidence regarding a sexual relationship between an adult and minor, which unduly prejudiced petitioner.

Petitioner was prejudiced by counsel's deficiency. By counsel's own admission the trial court likely would have granted his motion to sever the charges. Had the charges been severed and tried separately, there is a reasonable probability the trial result would have been different.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.



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This 16th day of September, 2025.