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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Post-Conviction Relief Judge

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Appellate Case No. 2022-001571

ANGELO HORACE TAYLOR.,

RESPONDENT,

v.

THE STATE OF SOUTH CAROLINA,

PETITIONER.

PETITION FOR REHEARING

On September 24, 2025, this Court affirmed the PCR court's grant of a new trial for Petitioner's case in an unpublished opinion. *Taylor v. State*, Unpublished. Op. No. 2025-UP-323 (S.C. Ct. App. filed September 24, 2025). Pursuant to Rule 221(a), SCACR, Petitioner respectfully petitions this Court for rehearing because this Court appears to have overlooked the relevant presumption and facts for evaluating deficiency and failed to apply the comprehensive consideration of the record as mandated by *Strickland v. Washington*, 466 U.S. 668 (1984). Consequently, the State respectfully petitions for rehearing.

DISCUSSION

Taylor initiated his PCR action on August 9, 2019, and an evidentiary hearing was convened on the matter on March 21, 2022. Subsequently, the PCR court granted Taylor relief by

Order filed September 14, 2022, finding that counsel was deficient for failing to accurately advise Taylor on his possible maximum sentence, and that counsel's incorrect advice induced Taylor's guilty plea thus warranting relief. The State appealed the grant of relief arguing the lower court had misapprehended the relevant facts and failed to faithfully apply the deferential *Strickland* standard or the comprehensive review of the record required in assessing prejudice.

Similar to the lower court, this Court erred by disregarding certain circumstances of Taylor's plea and failed to give plea counsel the "strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689. In concluding that the PCR court's findings of fact were supported by the record, this Court noted that "[p]lea counsel stated he did not remember discussing the amount of time Taylor might have to serve for the attempted armed robbery charge." As to Taylor, this Court noted that "Taylor stated plea counsel told him that the charge he was pleading to carried a lesser amount of time incarcerated." This Court erroneously refused plea counsel the presumption of reasonable representation under *Strickland* and used plea counsel's lack of memory to support the conclusion that he affirmatively misadvised Taylor. The absence of evidence simply cannot overcome the presumption of reasonable professional assistance. *See Burt v. Titlow*, 571 U.S. 12, 23 (2013) ("It should go without saying that the absence of evidence cannot overcome the 'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance.'") (citing *Strickland,* at 689).

Further, this Court failed to consider the context of Taylor's decision to accept the State's plea offer which our precedent requires. This Court relied on *Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991) to support the conclusion that the prejudice prong was fulfilled simply by Taylor's testimony that he would not have pled guilty (*i.e.*, he was prejudiced) had he not been

misadvised as to the amount of time he would have to serve. However, in contrast with post-*Alexander* precedent, this Court did not consider plea counsel's testimony that Taylor was enthusiastic about the plea offer and that Taylor *immediately agreed* to the offer. (App. 380-381) (emphasis added). *See Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) (generally "require[ing] more than simply a defendant's assertion that but for counsel's deficient performance he would have not pled guilty but would have gone to trial"); *Taylor v. State,* 404 S.C. 350, 362, 745 S.E.2d 97, 103 (2013) (requiring a defendant present "probative and credible evidence" to show the required prejudice).

Critically, and in similar context, the Supreme Court in *Hill v. Lockhart,* 474 U.S. 52 (1985) – the leading case for *Strickland* application in context of a guilty plea— observed that Hill had "alleged no special circumstances that might support the conclusion that he placed particular emphasis on his parole eligibility in deciding whether or not to plead guilty" in finding he had not carried his burden. *Id.*, at 60. Here, Taylor made the decision *to avoid a life sentence* and take advantage of reduced sentencing exposure. That appears to be wholly overlooked by the lower court and this Court in review of that ruling. Looking at the decision in context, however, as *Strickland* and *Hill* require, it must be noted that Taylor received a full trial and was waiting on the jury to reach a verdict after they were given an *Allen*[1] charge. Taylor was not simply facing a life sentence in theory, it was a real and present danger for him at the time. Taylor undoubtedly made a decision to accept the offer to escape the potential life sentence he could receive if the jury found him guilty of murder.

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1 *Allen v. United States*, 164 U.S. 492 (1896).

In consideration of the evidence presented and in review of the circumstances in context, the PCR court's conclusion that Taylor would not have pled had plea counsel—credible only because counsel did not expressly recall a conversation, *i.e.,* an absence of evidence—regarding counsel allegedly misadvised him concerning parole eligibility does not, indeed cannot, establish *Strickland* prejudice under correct application of the case law. Similarly, and in another legal error, this Court also failed to acknowledge that the State does not have to disprove a PCR applicant's testimony. There is no presumption of correctness or other theory that would support the testimony must be accepted as true. And in this case, it must not when the proper context is considered.

Plainly, a defense lawyer's inability to remember certain things about his representation of an applicant does not relieve the applicant of his burden under *Strickland* to present credible supporting evidence nor negate the "strong presumption" under *Strickland*. *Stalk v. State*, *supra; Taylor, supra.* The opinion to the contrary should be reconsidered.

CONCLUSION

For all the above reasons, the State petitions for rehearing pursuant to Rule 221(a), SCACR, and requests this Court grant rehearing, modify the opinion, and reinstate Petitioner's convictions.

Respectfully submitted,

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October 9, 2025
Columbia, South Carolina

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PROOF OF SERVICE

I, **Kaylee C. Kemp**, attorney for Respondent, hereby certify that the **Petition for Rehearing** has been forwarded to Respondent's counsel, Katherine H. Hudgins, and her legal assistant, Chris Stock via email today, October 9, 2025, at khudgins@sccid.sc.gov and cstock@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 9th day of October 2025.

Kaylee C. Kemp

*s/*_____

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Kaylee Kemp

From: Kaylee Kemp
Sent: Thursday, October 9, 2025 5:04 PM
To: Hudgins, Kathrine; Stock, Chris
Cc: Brandy Rankin
Subject: Angelo, Taylor - Petition for Rehearing & Proof of Service
Attachments: Taylor, Angelo - Petition for Rehearing - October 9, 2025.pdf; Taylor, Angelo - Proof of Service.pdf

Good evening –

Attached is the Petition for Rehearing along with the Proof of Service in the appellate action of Angelo Taylor. I will be forwarding to the Court for filing this evening.

Thank you!

Kind regards,

Kaylee C. Kemp, Assistant Attorney General
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