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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHEROKEE COUNTY
Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2025-001051

BRYSON J. SMITH,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF CONTENTS i

QUESTIONS PRESENTED 1

STATEMENT OF THE CASE 3

STATEMENT OF THE FACTS 4

STANDARD OF REVIEW 5

ARGUMENT 6

I. The PCR court correctly found Counsel was not ineffective for failing to object to the trial court's jury charges on possession and constructive possession where the court's jury charge on constructive possession was a correct statement of law under *State v. Adams*, the law existing at the time of trial, and the jury charge on possession included the definition of "knowledge" as required to prove possession. 6

II. The PCR court correctly found Counsel was not ineffective for failing to object to Facebook messages in which Petitioner made statements offering to "get" drugs for others because the messages are admissible under Rule 403 since the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, and the messages are admissible under Rule 404(b) since it is evidence of Petitioner's intent to control the disposition of the drugs by selling them. 8

III. The PCR court correctly found Petitioner failed to prove a reasonable probability a direct verdict motion would have been successful on grounds that the State failed to present sufficient evidence that Petitioner had dominion and control over the area since the State presented evidence from Petitioner's Facebook messages to demonstrate Petitioner's knowledge of the drugs and his right to exercise control over the room where the drugs were found and thus proved possession. 11

IV. The PCR court correctly found Petitioner failed to prove prejudice from Counsel not striking Juror 66, who was related to a witness for the State, where the trial court questioned the juror and found that she could be fair and impartial despite the relationship, and Petitioner failed to prove a reasonable probability that the result of trial would have been different if Counsel struck the juror. 13

V. The PCR court correctly found Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel not presenting evidence of the date on an envelope found in the room where the drugs were found because regardless of the age of the envelope, the State presented evidence from statements made by Petitioner's mother and other personal items found in the room to prove the room belonged to Petitioner and evidence that Petitioner he knew about the drugs and intended to sell them. 15

CONCLUSION 18

QUESTIONS PRESENTED

PETITIONER'S STATEMENT OF QUESTIONS

1. Did the lower court err in failing to find that trial counsel was ineffective in failing to object to the trial court's jury instructions on possession and constructive possession?

2. Did the lower court err in failing to find that trial counsel was ineffective in failing to object under SCRE 403 and 404 to Facebook messages that were introduced into evidence?

3. Did the lower court err in finding that trial counsel was not ineffective for failing to move for a direct verdict?

4. Did lower court in finding that trial counsel was not ineffective for failing to strike Juror 66 who was related to a witness for the State?

5. Did the lower court err in failing to present evidence as to the age of the mail found on the premises and introduce into evidence by the State?

RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS

I. Whether the PCR court correctly found Counsel was not ineffective for failing to object to the trial court's jury charges on possession and constructive possession where the court's jury charge on constructive possession was a correct statement of law under *State v. Adams*, the law existing at the time of trial, and the jury charge on possession included the definition of "knowledge" as required to prove possession?

II. Whether PCR court correctly found Counsel was not ineffective for failing to object to Facebook messages in which Petitioner made statements offering to "get" drugs for others because the messages are admissible under Rule 403 since the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, and the messages are admissible under Rule 404(b) since it is evidence of Petitioner's intent to control the disposition of the drugs by selling them?

III. Whether the PCR court correctly found Petitioner failed to prove a reasonable probability a direct verdict motion would have been successful on grounds that the State failed to present sufficient evidence that Petitioner had dominion and control over the area since the State presented evidence from Petitioner's Facebook messages to demonstrate Petitioner's knowledge of the drugs and his right to exercise control over the room where the drugs were found and thus proved possession?

IV. Whether the PCR court correctly found Petitioner failed to prove prejudice from Counsel not striking Juror 66, who was related to a witness for the State, where the trial court questioned the juror and found that she could be fair and impartial despite the relationship, and Petitioner failed to prove a reasonable probability that the result of trial would have been different if Counsel struck the juror?

V. Whether the PCR court correctly found Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel not presenting evidence of the date on an envelope found in the room where the drugs were found because regardless of the age of the envelope, the State presented evidence from statements made by Petitioner’s mother and other personal items found in the room to prove the room belonged to Petitioner and evidence that Petitioner he knew about the drugs and intended to sell them?

STATEMENT OF THE CASE

In September 2020, the Cherokee County Grand Jury indicted Bryson Smith ("Petitioner") for trafficking in methamphetamine (2020-GS-11-01149); trafficking in heroin (-01151); possession with intent to distribute ("PWID") fentanyl (-01150); PWID marijuana (-01147); and PWID cocaine (-01148). On November 3, 2020, Petitioner proceeded to a jury trial before the Honorable R. Keith Kelly. Assistant Solicitors Matthew Kendall and Kim Leskanic prosecuted the case. E. Joshua Schultz, Esq. ("Counsel"), represented Petitioner. Petitioner was convicted, and Judge Kelly sentenced him to a total sentence of forty (40) years: concurrent sentences of twenty-five (25) years for trafficking in meth; twenty-five (25) years for PWID cocaine; twenty (20) years for PWID marijuana; twenty-five (25) years for trafficking heroin and a consecutive sentence of fifteen (15) years for PWID fentanyl.

A notice of appeal was filed. On appeal, Petitioner was represented by Appellate Defender Adam Ruffin, who filed a brief pursuant to *Anders* v. California, 386 U.S. 738 (1967). Following *Anders* review, the Court of Appeals dismissed the appeal. *State v. Smith*, Op. No. 2022-UP-263 (Ct. App. filed June 15, 2022). The Remittitur was sent on July 5, 2022.

On February 27, 2023, Petitioner filed an application for post-conviction relief ("PCR"), alleging ineffective assistance of counsel. On July 1, 2024, the State ("Respondent" or "the State") filed its return. On July 10, 2023, and November 14, 2024, Petitioner filed amendments to his PCR application. On February 27, 2023, an evidentiary hearing was convened before the Honorable R. Scott Sprouse. Assistant Attorney General Bryan T. Hall represented the State. James W. Boyd, Esq., represented Petitioner. On April 16, 2025, Judge Sprouse denied Petitioner relief.

On April 28, 2025, Petitioner filed a Rule 59(e) motion to amend or reconsider. On May 7, 2025, Judge Sprouse denied the motion. This petition follows.

STATEMENT OF THE FACTS

On August 12, 2019, law enforcement responded to an address to serve arrest warrants on Petitioner. (App. 74). The home at the address belonged to Petitioner's mother, Traci Smith ("Ms. Smith"). Ms. Smith gave consent for police to enter the home and search for Petitioner. (App. 129-30). While searching for Petitioner, officers smelled marijuana and observed in plain view a bag of marijuana, crack cocaine, and a set of scales on the floor of a bedroom. (App. 130-32; 138-39). Officers obtained a search warrant for the house. (App. 244). Upon executing the search warrant, officers searched the room and found marijuana, cocaine, heroin, fentanyl, and methamphetamine. (App. 189-90; 207-08). Police also found drug paraphernalia and digital scales. (App. 138). The items were found in a room containing Petitioner's personal belongings and items bearing his name such as paperwork addressed to Petitioner, mail, and storage boxes labeled with "B. Smith." (App. 244; 261-62; 267; 269). Body camera footage was presented at trial showing Ms. Smith telling officers on the day of the search that the room was Petitioner's, and he slept in it. (App. 371; 372-73; 378; 378-80).

Brandon Gardner, an investigator, testified to Facebook messages dated for August 9-11, 2019, (the day before police found the drugs) from an account with a username "Buddy Dawkins." (App. 160). The account was linked to Petitioner's name and email address. (App. 158). In the messages, at least two (2) individuals inquired with Petitioner about drugs. (App. 159-61; 510-14). When asked if he had "beans" (drugs), Petitioner stated that he could get them. (App. 159-61; 510-14). Petitioner also stated that he "can get percs" (Percocets) for the individuals too. (App. 160-61). Petitioner also asked the individuals what they were trying to get (from him), and one of the individuals responded "weed." (App. 160).

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). An 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

I. The PCR court correctly found Counsel was not ineffective for failing to object to the trial court's jury charges on possession and constructive possession where the court's jury charge on constructive possession was a correct statement of law under *State v. Adams*, the law existing at the time of trial, and the jury charge on possession included the definition of "knowledge" as required to prove possession.

Counsel was not ineffective for failing to object to the trial court's jury charges on possession and constructive possession because the charges were correct statements of law under the law existing at the time of trial "The trial judge is required to charge only the current and correct law of South Carolina." *State v. Adkins*, 353 S.C. 312, 317-18, 577 S.E.2d 460, 463-64 (Ct. App. 2003). A jury charge is correct if, when read as a whole, it contains the correct definition and adequately covers the law. *Id*. A jury charge that is substantially correct and covers the law does not require reversal. *Id*. at 319, 577 S.E.2d at 464. In Petitioner's trial, the trial court charged the jury as follows.

> To prove possession, the State must prove beyond a reasonable doubt that he had both the power and the intent to control the disposition or use of the marijuana. Possession may be either actual or constructive possession.
>
> Actual possession means it was actually in his physical custody.
>
> Constructive possession means that the defendant had dominion and control or the right to exercise dominion and control over either the marijuana or the property on which the marijuana was found.
>
> The defendant's knowledge and possession may be inferred when a substance is found on a property under his control. However, this inference is simply an evidentiary fact to be taken into consideration along with other evidence and to be given the weight you decide it should have.

(App. 480:10-20).

Petitioner argues Counsel should have objected because trial court did not include "knowledge" in its jury charge on possession. Petitioner also argues the trial court did not charge

the jury that mere presence is not enough to prove possession. The law at the time of Petitioner's trial was *State v. Adams*, 291 S.C. 132, 352 S.E.2d 483 (1987), *overruled by State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808 (2021).

In *Adams*, the Court held that the trial court could charge the jury that the defendant's knowledge and possession may be inferred if the substance was found on premises under his control. *Id*. at 486, 352 S.E.2d at 136. The Court instructed, however, that the trial court should explain to the jury that it is free to accept or reject the permissive inference of knowledge and possession depending on its view of the evidence. *Id*.

In Petitioner's trial, the court's charged the jury using the *Adams* charge, which was a correct statement of the law at the time. Additionally, the trial court's possession charge was a correct statement of the law because it included the definition of "knowledge," stating the State most prove the defendant had "the intent to control the disposition" of the drugs. (App. 480). *State v. Lane*, 271 S.C. 68, 72-73, 245 S.E.2d 114, 116 (1978) (defining "knowledge" as "intent to control the drug's disposition or use").

Petitioner cites *Stewart*. In *State v. Stewart*, the Court held that trial courts cannot charge the jury that it may infer a defendant's knowledge or possession of drugs from the mere fact that the defendant had control over the property where the drugs were found. *State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808 (2021).

However, *Stewart* was decided in May 2021, six (6) months *after* Petitioner's trial in November 2020. As required by *Strickland*, this Court is to evaluate Counsel's conduct under the law existing at the time of trial. *Winkler v. State*, 418 S.C. 643, 654, 795 S.E.2d 686, 692 (2016) (stating when examining counsel's decision not to make a particular objection, the court must consider "whether there was any law to support the objection"). Since *Stewart* was not the law at

the time of Petitioner's trial, Counsel cannot be deemed deficient or ineffective for not objecting to the jury charge based on *Stewart* precedent.

Petitioner argues Counsel *should have known* to object to the charge because *Stewart* was pending on appeal around the time of Petitioner's trial. However, Counsel is not required to anticipate changes in the law that did not exist at the time of Petitioner's conviction. *Harden v. State*, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004) ("[a]n attorney is not required to anticipate potential changes in the law that did not exist at the time of conviction").

Petitioner also argues Counsel should have objected to preserve the issue since *Stewart* was pending. However, Counsel could not have known how the Court would rule in *Stewart*, and Counsel is not required to be clairvoyant and foresee successful appellate challenges. *Teamer v. State*, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016) (stating "reasonable presentation does not require trial counsel to foresee successful appellate challenges to novel questions of law[,]" and counsel is "not required to be clairvoyant" (internal quotation and citation omitted)). Therefore, Counsel was not deficient for failing to object to a correct and proper jury charge. Further, Petitioner failed to prove prejudice by failing to prove a reasonable probability that the result of trial would have been different if Counsel had objected. The PCR court correctly found Counsel was not ineffective.

II. The PCR court correctly found Counsel was not ineffective for failing to object to Facebook messages in which Petitioner made statements offering to "get" drugs for others because the messages are admissible under Rule 403 since the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, and the messages are admissible under Rule 404(b) since it is evidence of Petitioner's intent to control the disposition of the drugs by selling them.

Counsel was not ineffective for not objecting to Facebook messages admitted into evidence in which Petitioner made statements offering to get drugs for others since the messages were

admissible under both Rules 403 and 404(b), SCRE.[1] Failing to object does not automatically constitute ineffective assistance of counsel; an applicant must prove both deficiency and prejudice. *Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018). The proper inquiry for determining prejudice for failing to object is whether there is evidence to support the trial court's ruling such that "an appellate court would necessarily have affirmed the trial court's ruling." *Id*. at 380, 811 S.E.2d at 804.

An ineffective assistance claim based on failure to object is tied to the admissibility of the underlying evidence. *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of *Strickland*: failing to object to admissible evidence cannot be professionally unreasonable, nor can it prejudice the defendant against whom the evidence was admitted." *Id*.

In the Facebook messages, dated for August 9-11 (the day before police found the drugs), Petitioner made statements to others indicating that he can "get" drugs for them. In the messages, when asked if he had "beans," and Petitioner stated that he can get them and "percs" (Percocets) too. (R. 160). Petitioner also asked the individuals what they were trying to get (from him), and one of the individuals responded "weed." (App. 160). The trial court admitted the Facebook messages. (Tr. St.'s Ex. 10; App. 507-14).

A. Counsel was not deficient for not objecting, and Petitioner was not prejudiced because the Facebook messages were admissible under Rule 403, SCRE, since the probative value of the messages was not substantially outweighed by the danger of unfair prejudice.

Under Rule 403, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice… Rule 403, SCRE. "Unfair prejudice" means an

[1] The record reflects Counsel made pre-trial and contemporaneous trial objections to the admission of the Facebook records on authentication and hearsay grounds. (App. 101-02; 146).

undue tendency to suggest a decision based on an improper basis. *State v. Tallent*, 430 S.C. 438, 448, 845 S.E.2d 508, 513 (Ct. App. 2020). The probative value of the Facebook messages was not substantially outweighed by the danger of unfair prejudice since the evidence did not have an undue tendency to suggest that the jury reach a decision based on an improper basis. As a result, even if Counsel had objected under Rule 403, the trial court would have likely overruled the objection and admitted the evidence.

To the extent that Petitioner alleges Counsel was deficient for failing to preserve the issue for appeal, Petitioner failed to prove prejudice since there is sufficient evidence in the record for the appellate courts to find that the Facebook messages were relevant and the probative value was not substantially outweighed by the danger of unfair prejudice. If preserved, the appellate courts would have likely found the trial court did not abuse its discretion in admitting the evidence. Therefore, Petitioner failed to prove deficiency and prejudice for Counsel not objecting to the evidence under Rule 403, SCRE.

B. Counsel was not deficient for not objecting, and Petitioner was not prejudiced because the Facebook messages were admissible under Rule 404(b), SCRE, since it was evidence of Petitioner's intent to control the disposition of the drugs by selling them to others.

Under Rule 404(b), evidence of other crimes, wrong, or acts is inadmissible to show action in conformity therewith. Rule 404(b), SCRE. However, such evidence may be admissible to show motive, identity, common plan or scheme, absence of mistake, or *intent*. Rule 404(b), SCRE (emphasis added). To prove possession, the State was required to prove Petitioner's knowledge of the drugs, meaning his *intent* to control the disposition of the drugs. *Lane*, 271 S.C. at 72-73, 245 S.E.2d at 116 (stating possession of a drug requires knowledge; defining "knowledge" as "intent to control the drug's disposition or use").

The State presented the Facebook messages, not to prove Petitioner's conformity therewith, but to prove his intent to control the disposition of the drugs based on his statements that he can "get" them for others (sell them). As a result, even if Counsel had objected, the trial court would have likely overruled the objection and admitted the Facebook messages as evidence of Petitioner's intent under Rule 404(b).

To the extent that Petitioner alleges Counsel was deficient for failing to preserve the issue for appeal, Petitioner failed to prove prejudice since there is sufficient evidence in the record for the appellate courts to find that the Facebook messages were admissible as evidence of intent under Rule 404(b). The appellate courts would have likely found that the trial court did not abuse its discretion in admitting the evidence. Therefore, Petitioner failed to prove deficiency and prejudice from Counsel not objecting to the Facebook messages under Rule 404(b), SCRE.

III. The PCR court correctly found Petitioner failed to prove a reasonable probability a direct verdict motion would have been successful on grounds that the State failed to present sufficient evidence that Petitioner had dominion and control over the area since the State presented evidence from Petitioner's Facebook messages to demonstrate Petitioner's knowledge of the drugs and his right to exercise control over the room where the drugs were found and thus proved possession.

Counsel was not ineffective for not moving for directed verdict on grounds that the State failed to present sufficient evidence that Petitioner had dominion and control over the area where the drugs were found. Petitioner failed to prove prejudice by failing to prove a reasonable probability that a directed motion on such grounds would have been successful since the State presented evidence of Petitioner's knowledge of the drugs and right to exercise control over the room where the drugs were found (constructive possession) and thus, proved Petitioner's possession of the drugs.

Possession of a drug requires proof of (1) either actual or constructive possession of the drug and (2) "knowledge" of its presence. *Lane*, 271 S.C. at 72, 245 S.E.2d at 116. "Knowledge"

means the accused has an "intent to control the drug's disposition or use." *Id*. at 73, 245 S.E.2d at 116. For constructive possession, mere presence is insufficient; the State must show the defendant had dominion and control or the right to exercise dominion and control over the drug. *State v. Heath*, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006).

Petitioner cites *Heath*. In *Heath*, Court held the State failed to present evidence that the defendant could exercise dominion and control over the area where the drugs were found. *Id*. at 330, 635 S.E.2d at 19. The defendant lived in the home with his mother and the drugs were found on the property. *Id*. at 329, 635 S.E.2d at 18-19. Although the defendant had a right to access the property, the Court determined the State failed to present evidence to show the defendant had dominion and control over the area where the drugs were found. *Id*. at 330, 635 S.E.2d at 19.

However, Petitioner's case is comparable to *Lane*. In *Lane*, the Court held a business owner (defendant) had constructive possession and knowledge of drugs found on the business premises where the State presented evidence through the defendant's statements to police that he could get more marijuana and set up a buy. *Lane*, 271 S.C. at 71-73, 245 S.E.2d at 115-117. The Court held that based on his statements to police, the evidence was sufficient to infer that the defendant had dominion and control over the premises (constructive possession) and intended to control the use or disposition of the drugs (knowledge). *Id*. at 73, 245 S.E.2d at 117.

Similar to *Lane*, Petitioner made statements to others that he could "get" drugs for them. Petitioner's admissions, made the day before the drugs were found, evidences his intent to control the disposition of the drugs by selling them (knowledge). Additionally, since the drugs were found in Petitioner's room at his mother's house, Petitioner had a *right to exercise dominion and control* over the room in which the drugs were found, and Petitioner's statements are sufficient to infer that Petitioner had dominion and control over the room (constructive possession).

Using evidence from the Facebook messages, the State established the elements of possession and proved that Petitioner had dominion and control over the room where the drugs were found. Therefore, Counsel was not ineffective for failing to move for directed verdict on grounds that the State failed to present sufficient evidence because the State presented evidence of Petitioner's possession. *See Brown v. State*, 307 S.C. 465, 415 S.E.2d 811 (1992) (holding counsel was not ineffective for moving for directed verdict on grounds that the evidence did not establish a criminal act causing death where the state presented evidence of strangulation).

IV. The PCR court correctly found Petitioner failed to prove prejudice from Counsel not striking Juror 66, who was related to a witness for the State, where the trial court questioned the juror and found that she could be fair and impartial despite the relationship, and Petitioner failed to prove a reasonable probability that the result of trial would have been different if Counsel struck the juror.

Petitioner failed to prove prejudice from Counsel not striking Juror 66 for being related to a witness for the State. There is no common law rule or statute disqualifying a juror on account of his relationship to a witness, either by affinity or consanguinity, within any degree. *State v. Hilton*, 87 S.C. 434, 69 S.E. 1077 (1911). The fact that a juror has a relationship with a witness does not automatically disqualify a juror. *See State v. Burgess*, 391 S.C. 15, 18, 703 S.E.2d 512, 514 (Ct. App. 2010) (finding no error in a trial judge's decision not to remove a juror that had some relationship with the victim after finding the juror could be fair and impartial).

In Petitioner's trial, Juror 66 informed the court that she had a family member that works for the Cherokee County Sheriff's Office. (App. 13-15). The trial court questioned the juror about whether her relationship with the family member would interfere with her ability to be fair and impartial. (App. 15). The juror indicated the relationship would not interfere with her ability to be fair and impartial. (App. 15). Juror 66 was seated on the jury and subsequently selected as the jury's forewoman. (App. 22; 28-29).

At the PCR hearing, Counsel testified that he believed that he could not strike Juror 66 because he was out of strikes. (App. 571:11-12). However, Counsel also testified that he cannot remember if he had a strategic reason for seating Juror 66 but looking back, agrees that he should have struck her. (App. 586-88). Counsel further testified that he cannot say for certain that if the juror had been struck, it would have changed the outcome of the case. (App. 587).

Although Counsel testified *in hindsight* that he should have struck Juror 66, Counsel's self-proclaim admissions of deficiency are not dispositive to the issue of ineffectiveness. *See Wright v. Hooper*, 169 F.3d 695, 707 (11th Cir. 1999) (stating when trial counsel alleges on PCR that she was incompetent or ineffective, such self-proclaimed admissions are not decisive as to the question of ineffectiveness (citation omitted)); *see also Walls v. Bowersox*, 151 F.3d 827 (8th Cir. 1998) ("Ineffectiveness is a question for the courts, not counsel, to decide."). Additionally, courts are required to evaluate Counsel's conduct at the time of trial, not in hindsight. *Edwards*, 392 S.C. at 456, 710 S.E.2d at 64 ("every effort [must] be made to eliminate the distorting effects of hindsight" (quoting *Strickland*, 466 at 689)).

Petitioner failed to prove prejudice by failing to prove the juror's relationship to the State's witness affected her ability to be fair and impartial in Petitioner's trial. The trial court questioned the juror and found that she could be fair and impartial despite her relationship. Petitioner failed to meet his burden of proving that the juror's relationship to the witness resulted in prejudice. *Butler*, 286 S.C. at 442 (stating "the burden of proof is on the applicant to prove the allegations in his application.").

Petitioner also failed to prove prejudice by failing to prove a reasonable probability that the result of this trial would have been different but for Counsel not striking the juror. In light of the evidence presented, even if Counsel struck Juror 66, there was substantial evidence for the jury

to convict Petitioner beyond a reasonable doubt: officers were lawfully on the property to serve warrants, observed drugs and drug paraphernalia consist with distribution in plain view in a room belonging to Petitioner, and Petitioner made statements on Facebook offering to sell the drugs to others. Therefore, the PCR court correctly found Petitioner failed to prove prejudice.

V. The PCR court correctly found Petitioner failed to prove a reasonable probability that the result of trial would have been different but for Counsel not presenting evidence of the date on an envelope found in the room where the drugs were found because regardless of the age of the envelope, the State presented evidence from statements made by Petitioner's mother and other personal items found in the room to prove the room belonged to Petitioner and evidence that Petitioner he knew about the drugs and intended to sell them.

Petitioner failed to prove prejudice from Counsel not presenting evidence of the date on an envelope found in a room containing the drugs and Petitioner's other belongings. Petitioner failed to prove a reasonable probability that the result of trial would have been different because regardless of the date on the envelope, other items belonging to Petitioner were found in the room, Petitioner's mother admitted that the room belonged to Petitioner, and Petitioner made statements on Facebook evidencing his knowledge of the drugs.

Counsel was not deficient for not presenting evidence of the date of the envelope. Notwithstanding, "a court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed." *Strickland*, 466 U.S. at 670. A PCR applicant must prove that "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. In evaluating prejudice, the courts should consider the strength of the State's case in light of all the evidence presented to the jury: "the stronger the evidence presented by the State, the less likely the PCR court will find

the applicant met his burden of proving prejudice." *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 174 (2018) (citing *Strickland*, 466 U.S. at 696)).

At trial, the State presented evidence of an undated letter bearing Petitioner's name, found by police in the room in which the drugs were also found. (St.'s Ex. 42; App. 323-24; PCR Appl.'s Ex. 1). Petitioner argues the letter in question was from 2017, before the date when the drugs were found in August 2019.

Even if Counsel established that the letter was from 2017, it would not have changed the outcome of trial because excluding the letter, there was other evidence that the room belonged to Petitioner. *Cf. Smalls*, 422 S.C. at 194-95, 810 S.E.2d at 847 (analyzing whether a PCR applicant suffered prejudice from counsel's inaction based on a review of all of the evidence submitted, excluding the tainted testimony). The State presented body camera footage from the home search in which Petitioner's mother told police that the room belonged to Petitioner. (App. 371). Police found other items in the room bearing Petitioner's name including other mail, documents, and storage boxes. (App. 244; 261-62; 267; 269). Additionally, the State presented Petitioner's Facebook messages, in which he told others that he could get them drugs, which evidenced his knowledge of the drugs in the room.

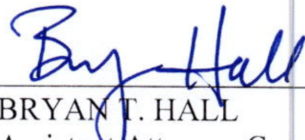
Petitioner argues that Counsel did not call Petitioner's mother as a witness. (Pet. 7). This is directly refuted by the record: Counsel called Traci Smith, Petitoner's mother, as a witness at trial. (App. 353). On the stand, Ms. Smith denied telling officers that the room belonged to Petitioner. (App. 368:25-369:6). Impeaching Ms. Smith, the State admitted body camera footage in which Ms. Smith told officers that the room belonged to Petitioner, and he slept in there. (App. 372-73; 378; 378-80).

Petitioner failed to prove a reasonable probability that the result of trial would have been different in light of the evidence presented to the jury from the officers finding the drugs in a room that Petitioner's mother admitted was his; Petitioner's other belongings being found in the room; and Petitioner's statements that he could get drugs for others. Therefore, Petitioner failed to prove prejudice, and the PCR court correctly denied relief.

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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October 15, 2025